TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~349~~ 145

THE SCHOONER OCEAN SPRAY, ETC.—GEORGE KENTFIELD, CLAIMANT—APPELLANTS,

vs.

N. C. ERLANDSON ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED DECEMBER 11, 1869.

9

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INDEX.

	Original.	Print.
Answer	22	9
Appeal to circuit court	1	1
Appeal to Supreme Court, order, and stipulation	240, 241	76, 77
Bond to release, *rem*	18	7
Baird, H. C, deposition of	135	44
Brown, Christian, deposition of	59	22
Brown, H., deposition of	102	35
Brown, T., deposition of	155	49
Claim	13	5
Carlson, J. E., deposition of	161	51
Cameron, Alexander, deposition of	109	37
Coombs, R. G., deposition of	147	47
Coombs, Silas, deposition of	167	53
Commissioner, report of	183	58
Decree of district court, interlocutory	181	57
Decree of district court, final	225	71
Decree of circuit court	238	76
Dunn, W. H., deposition of	125	41
Exceptions to commissioner's report	214	68
Griffith T. H., deposition of, (circuit court)	234	71
Grimmer, J. M., deposition of	50	19
Golgert, Frederick, deposition of	117	39
Holman, James, deposition of	139	45
Libel	5	2
Libel, order allowing amendment to	218	69
Libel, amended	220	70
Monition	11	5
Monition, order on return of	21	8

	Original.	Print.
Mahlmann, A. F., deposition of	121	40
Orders of trial, district court	26–28	10, 11
Order of trial, circuit court	232	74
Order for decree and reference, district court	28	11
Order for decree in circuit court	232	74
Order on report of commissioner	228	72
Peterson, P., deposition of	94	32
Report of commissioner	183	58
Scott, Charles, deposition of	80	28
Smith, John, deposition of	129	43
Stickney, Ruel, deposition of	175	55
Stipulation for costs, (libellants)	9	4
Stipulation for costs, (claimants)	15	6
Stipulation to take testimony	93	32
Stipulation allowing bonding of *rem*	17	7
Stipulation to allow $370 for wreck	216	69
Stipulation on appeal to Supreme Court	241	77
Testimony, judge's notes at trial	29–49	11–19
Thompson, Peter, deposition of	63	23

1 Circuit court of the United States held in and for the district of California.—In admiralty.

THE SCHOONER OCEAN SPRAY, &c., AND GEORGE Kentfield, master and owners thereof, claimant, defendant, and appellants,
vs.
A. C. ERLANDSON AND CHAS. J. LEE, Libellant and appellees.

To the Honorable Stephen J. Field, justice of the circuit court of the United States, tenth judicial circuit, held in and for the district of California:

The appeal of the above-named appellants respectfully showeth that on or about the twenty-sixth day of March, one thousand eight hundred and sixty-eight, A. C. Erlandson and William M. Hendry, exhibited their libel in the district court of the United States for the district of California, against the appellants, claiming twenty thousand dollars, praying, among other things, for the reasons set forth in said libel, that these appellants might be condemned to pay the demand of said libellants in said libel mentioned and costs, which libel was afterwards amended Oct. 20th, 1868.

2 That process, issued out of said court, having been served on these appellants, the schooner Ocean Spray and George Kentfield, they did, on or about the fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-eight, file answer to said libel in the said district court, praying that the said libel be dismissed with costs in that behalf, as by reference to said libel and the said answer may more fully appear.

That said cause came on to be heard before the Honorable Ogden Hoffman, judge of said district court, on or about the 20th, 21st, 23d, and 24th days of August, 1868, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties; and the said judge having advised thereon on the 1st day of October, 1868, made an interlocutory decree or sentence in said cause, whereby it was, among other things, sentenced and decreed that the libellants in said cause recovered against these appellants the damages which they sustained by reason of the collision; and on the said day said court made an order referring said cause to George E. Whitney, esq'r, United States commissioner, to take proofs, and report to the court the damages sustained by libellants as aforesaid. That on the 16th day of October, 1868, said commissioner made his report, finding the schooner "L. C. Lane," her tackle, apparal, and furniture, with the sum of $12,000

3 in U. S. gold coin, or the sum of $16,666$\frac{66}{100}$ in currency, and the value of the provisions and clothing, the property of libellants, $125 in U. S. gold coin, or the sum of 173\frac{61}{100}$ in currency, and the value of the cargo laden on board, $280 in U. S. gold coin, or 388\frac{88}{100}$ in currency, and the loss sustained by libellants by reason of their inability to fulfill a charter under which the "L. C. Lane" was, at the time of collision, at the sum of $7,200 in U. S. gold coin, or the sum of $10,000 in currency. That on the 19th day of October, 1868, appellants filed their exceptions to said report; that on the 20th day of October, 1868, said court overruled the first and second exceptions to said report, and made a final decree in said cause, confirming the report of said commissioner, and the amount of seventeen thousand five hundred and thirteen $\frac{50}{100}$

dollars ($17,513 $\frac{50}{100}$) as the damages due libellants in said action, together with their costs. And the court further ordered that a summary judgment be entered against the surities on the bond given to release said schooner Ocean Spray, for the sum of thirteen thousand five hundred dollars, ($13,500,) the amount of the said bond.

And these appellants are advised and insist that the said orders, decrees, and sentences are erroneous, inasmuch as the said libellants were not entitled to any damages in the premises.

And the appellants, for these and other reasons, appeal from
4 the whole of said decree in favor of N. C. Erlandson and Chas. J. Lee to the next circuit court, to be held in the said district, and on the said appeal they intend to have the said cause heard anew in the said circuit court, on the pleadings and proofs in the district court, and other proofs to be introduced in the said circuit court.

And these appellants pray that the record and proceedings may be returned to the said circuit court, and that the said decree may be reissued, or such other decree thereon made as to said circuit court shall seem just, and that the appellees be condemned to pay to the appellants their costs and damages in the premises.

Dated at San Francisco, November 2d, 1868.

E. B. MASTICK AND
J. B. MANCHASTER,
Proctors for Appellants.

Endorsed:

Service of a copy of the within appeal is hereby admitted.
Nov. 3d, 1868.

H. & C. McALLISTER,
Proctors for Appellees.

Filed 2 Nov'r, 1868.

GEO. E. WHITNEY, *Clerk.*

5 *Libel.*

In the district court of the United States in and for the district of California.

NICHOLAS C. ERLANDSON AND WM. M. HENdry, libellants,
vs.
THE SCHOONER OCEAN SPRAY, HER TACKLE, apparal and furniture, and George Kentfield, master and owner.

To the Honorable Ogden Hoffman, judge of the district court of the United States for the district of California:

The libel of Nicholas C. Erlandsen and William M. Hendry, assignee of the interest of Charles J. Lee, both of the city and county of San Francisco, State of California, against the schooner "Ocean Spray," her tackle, apparel, and furniture, and against George Kentfield, master and owner, and all persons lawfully intervening for their interest in said schooner, in a cause of collision, civil and maratime, alleges as follows:

First. That your libellants before and at the time of the collision, hereinafter in the third article mentioned, were the owners and proprietors of a certain schooner called the "L. C. Lane," with her masts, tackle,
6 apparel, furniture, and boats, which said schooner libellants used in

the transportation of freight, and which at the time of said collision libellants were using in the carrying of lumber from port in Puget Sound, and on the northern coast of California, to San Francisco.

Second. That on the 27th day of February, A. D. 1868, said schooner "L. C. Lane," under the charge and direction of libellant Nicholas C. Erlandsen, as master, left the port of San Francisco, fully and properly equipped, provisioned, officered, and manned, for a voyage to the port of Mendocino, California.

Third. That on the fourth (4th) day of March, A. D. 1868, said schooner "L. C. Lane" arrived off the said port of Mendocino, but being signalled from the shore that it was dangerous to enter said port at that time, the master of said "L. C. Lane" bore off for Little River Harbor, distant some three miles. That at this time said schooner "Ocean Spray," George Kentfield, master, was from a mile to a mile and a half distant, bearing off the port quarter of said "L. C. Lane." That as said L. C. Lane was entering said Little River Harbor, being on the inside of the reef, close hauled on the wind, the said "Ocean Spray" overtook her, (said "L. C. Lane,") said "Ocean Spray" being outside of the reef and sailing free.

7 That said schooner "Ocean Spray" attempted with a free wind to cut across said reef and get into said harbor in advance of said "L. C. Lane," and that at that time said "L. C. Lane" was sailing on the wind, close hauled, having a ledge of rocks to leeward of her, so that she was unable to pay off to leeward. That in attempting to cut across said reefs, and to get in advance of said L. C. Lane, said "Ocean Spray" was so carelessly and negligently handled by her master and officers, that she ran into said "L. C. Lane," striking said L. C. Lane on her port side in front of her main chains and cutting her, said L. C. Lane, down to the water's edge, that said "Ocean Spray" then twice surged against said "L. C. Lane," doing much more damage to said "L. C. Lane."

G. E. W., Cl'k.
By A. D. G., D. C.

That said L. C. Lane then became unmanageable, and drifted upon the rocks, leaking so fast that her said master, his officers, and crew, were unable, despite their exertions, to keep her afloat, and they were forced to attempt to run her for the nearest beach, but that the water gained on them so rapidly that said L. C. Lane sank before they could get her up on the beach, and became a total wreck.

Fourth. That said L. C. Lane was so run foul of and destroyed by the wilfull negligence and carelessness of the master and officers of said "Ocean Spray," and without any fault upon the part of the master

8 or the officers, or any of them, or crew, or any of them, of said "L. C. Lane," and that the damage occasioned to said libellants in the destruction of said schooner "L. C. Lane," by said negligence and carelessness, is the sum of twenty thousand dollars.

Fifth. That the said schooner "Ocean Spray" is now lying in the port of San Francisco, and within the jurisdiction of this hon. court.

Sixth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

Wherefore libellants pray that process in due form of law, according to the course of this honorable court, in cases of admiralty and maritime jurisdiction, may issue against the said schooner "Ocean Spray," her tackle, apparel, and furniture, and that the said George Kentfield, her master, and owners of said schooner, and all persons claiming any right, title, or interest in said schooner "Ocean Spray," may be cited to appear and answer upon oath, all and singular the matter aforesaid, and that this honorable court would be pleased to decree the payment of the dam-

ages as aforesaid, and that the said schooner "Ocean Spray" may be condemned and sold to pay the same, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

C. J. LEE,
For N. C. Erlandsen.

9 H. & C. McALLISTER,
Proctors for Libellants.

Sworn this 26th day of March, A. D. 1868, before me.
GEO. E. WHITNEY,
Com'r U. S. Courts Dist. of California.

Endorsed: Filed 26th March, 1868.
GEO. E. WHITNEY, *Clerk.*

Stipulation for costs.—Libellant.

UNITED STATES OF AMERICA,
District court of the United States for the district of California:

Whereas a libel was filed in this court on the 26th day of March, in the year of our Lord one thousand eight hundred and sixty-eight, by N. C. Erlandsen against the "Ocean Spray," &c., for reasons and causes in the libel mentioned, and the said N. C. Erlandsen and C. J. Lee and Wm. F. Nelson, his sureties, parties, hereto, hereby consenting and agreeing that, in case of default or contumacy on the part of the said libellant or his sureties, execution may issue against their goods, chattels, and lands for the sum of five hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of

10 them is, bound in the sum of five hundred dollars conditioned the libellant above named shall pay all costs and charges that may be awarded against them in any decree by this court, or, in case of appeal, by the appellate court.

N. C. ERLANDSEN,
By C. J. LEE.
C. J. LEE.
WM. F. NELSON.

Taken and acknowledged this 26th day of March, 1868, before me.
GEO. E. WHITNEY,
U. S. Commissioner.

DISTRICT OF CALIFORNIA, *ss:*

C. J. Lee and W. F. Nelson, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his debts and liabilities.

C. J. LEE.
WM. F. NELSON.

Sworn to this 26th day of March, 1868, before me.
GEO. E. WHITNEY,
United States Com'r.

Filed this 26th day of March, 1868.
GEO. E. WHITNEY, *Clerk.*

11 *Monition.*

DISTRICT OF CALIFORNIA, *ss:*

[SEAL.] The President of the United States of America to the marshall of the United States for the district of California, greeting:

Whereas a libel hath been filed in the district court of the United States for the district of California, on the 26th day of March, in the year of our Lord one thousand eight hundred and sixty-eight, by N. C. Erlandsen against the schooner "Ocean Spray," her furniture, tackle, &c., and George Kentfield, master and owner, for the reasons and the causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said schooner or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

12 You are therefore hereby commanded to attach the said schooner or vessel, her tackle, &c., and detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they may be and appear before the said court to be held in and for the district of California on the 14th day of April, 1868, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations on that behalf; and what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Honorable Ogden Hoffman, judge of said court, at the city of San Francisco, in the district of California, this 26th day of March, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-second.

GEO. E. WHITNEY, *Clerk.*

H. & C. MCALLISTER, Esq'rs,
Proctors for Libellants.

(Endorsed:) Monition ret'ble 14 April, 1868. Issued 26th March, 1868. Filed April 14th, 1868.

GEO. E. WHITNEY, *Clerk,*
Per S. NEAL, *D. C.*

13 *Claim.*

District court of the United States, district of California.—In admiralty.

N. C. ERLANDSEN
vs.
THE SCHOONER "OCEAN SPRAY," HER TACKLE, &c.

To the Honorable Ogden Hoffman, judge of the district court of the United States for the district of California:

George Kentfield, of the city of San Francisco, master of the schooner "Ocean Spray," her tackle, apparel, and furniture, intervening for the

G. E. W., Clk. By A. D. G., D. C.

interest of the owners thereof, in the above action, appears before this honorable court and claims the said schooner "Ocean Spray," her tackle, apparel, and furniture, and states that he, George Kentfield, is the true and bone fide owner of said schooner, and that no other person is the owner thereof.

And thereupon the said claimant prays that this honorable court will be pleased to decree a restitution of the same to him, and otherwise right and justice to administer in the premises.

GEORGE KENTFIELD.

E. B. MASTICK and J. B. MANCHESTER, *Proctors.*

Sworn to before me this 28th day of March, 1868.

S. NEALL, *Com'r U. S.*

14 (Endorsed:) Filed March 3d, 1868.

GEO. E. WHITNEY, *Clerk,*
By S. NEALL, *D. C.*

15 *Stipulation for costs, (claimant.)*

UNITED STATES OF AMERICA,
District court of the United States for the district of California:

Whereas a libel was on file in this court on the 26th day of March, in the year of our Lord one thousand eight hundred and sixty-eight, by N. C. Erlandsen against the schooner "Ocean Spray," etc., for reasons and causes in the libel mentioned, and whereas Geo. Kentfield has this 30th March, 1868, filed a claim to said vessel, and the said George Kentfield, principal, and L. B. Mastick, as surety, his sureties, parties thereto, hereby consenting and agreeing that, in case of default or contumacy on the part of said claimant or his sureties, execution may issue against their goods, chattels, and lands for the sum of five hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the claimant above named shall pay all costs and charges that may be awarded against them in any decree by this court, or, in case of appeal, by the appellate court.

GEO. KENTFIELD.
JNO. KENTFIELD.
L. B. MASTICK.

16 Taken and acknowledged this thirtieth day of March, 1868, before me.

S. NEALL, *United States Comm'r.*

DISTRICT OF CALIFORNIA, *ss:*

Geo. Kentfield and L. B. Mastick, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his debts and liabilities.

GEO KENTFIELD.
L. B. MASTICK.

Sworn to this 30th day of March, 1868, before me.

S. NEALL, *U. S. Com'r.*

Filed the 30th day of March, 1868.

GEO. E. WHITNEY, *Clerk,*
By S. NEAL, *D. C.*

17 *Stipulation to bond in value.*

U. S. district court, district of California.—In admiralty.

N. C. ERLANDSEN
vs.
THE SCHOONER "OCEAN SPRAY," HER TACKLE, &c.

It is hereby stipulated and agreed between the proctors for libellants and claimant in the above-entitled action, that said schooner "Ocean Spray" be released from the custody of United States marshall, by giving a bond or stipulation to said marshal in the sum of thirteen thousand five hundred dollars, that being the value of said vessel, her tackle, apparel, and furniture, as agreed upon between said proctors.

Dated March 30th, 1868.

H. & C. MCALLISTER,
Proctors for Libellants.
J. B. MANCHESTER,
Proctor for Claimant.

(Endorsed:) Filed March 30th, 1868.

GEO. E. WHITNEY, *Clerk*,
By S. NEALL.

18 *Bond to release.*

U. S. district court, district of California.—In admiralty.

N. C. ERLANDSEN
vs.
THE SCHOONER "OCEAN SPRAY," HER TACKLE, &c.

Whereas a libel was filed on the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and sixty-eight, by N. C. Erlandsen, against the schooner "Ocean Spray," her tackle, apparel, and furniture, for the reasons and causes in said libel mentioned; and whereas the said vessel is now in the custody of Chas. W. Rand, the United States marshal for the district of California, under the process issued in pursuance of the prayer of said libel, and is of the value of thirteen thousand five hundred dollars, as appears by consent of proctors for libellant and claimant in said action, now on file in the clerk's office of the district court of the United States for said district; and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the claimant or his sureties, execution may issue against their goods, chattels, and lands: Now, therefore, it

19 is hereby stipulated, for the benefit of whom it may concern, that the stipulation undersigned, and each of them, is bound in the sum of thirteen thousand five hundred dollars, conditioned that they shall at any time, upon the interlocutory and final decree or order of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree of said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to the said claimant or J. B. Manchester, esq'r., his proctor, pay into court the full value aforesaid, and abide by, and pay the money awarded by the final decree awarded by this court or the appellate court if any appeal intervene.

JOHN KENTFIELD. [SEAL.]
L. B. MASTICK. [SEAL.]

Taken and ackowledged this 30th day of March, 1868, before me.
S. NEALL, *U. S. Com'r.*

DISTRICT OF CALIFORNIA, *ss:*

John Kentfield and L. B. Mastick, parties to the above stipulation, being duly sworn, each for himself deposes and says that he is worth the sum of thirteen thousand five hundred dollars over and above
20 all his just debts and liabilities of property exempt from execution.

JOHN KENTFIELD.
L. B. MASTICK.

S. NEALL, *U. S. Com'r.*

The justification of the above sureties hereby waived and the bonds approved.
March 30th, 1868.

H. & C. MCALLISTER,
Proctors for Libellants.

Endorsed: Filed March 30th, 1868.

GEO. E. WHITNEY,
Per S. NEALL, *D. C.*

21 *Order on return of monition.*

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Tuesday, the 14th day of April, in the year of our Lord one thousand eight hundred and sixty-eight:
Present, the Honorable Ogden Hoffman, district judge.

N. C. ERLANDSEN
versus
SCHOONER OCEAN SPRAY, ETC. } Order on return of motion.

The marshal having returned upon the monition in this cause, that he has attached the said schooner, her tackle, etc., and given due notice to all persons claiming the same that this court would, on this day, proceed to the trial and condemnation thereof, should no claim be interposed for the same:

By order of the court, on motion of H. McAllister, proctor for the libellants, proclamation was made for all persons having anything to say
G. E. W., Cl'k. why the said schooner should not be condemned and sold
By A. D. G., D. C. to answer the prayer of the libellants to appear; and thereupon, on motion of J. B. Manchester, esq'r, on behalf of claimants, ordered that claimants have 10 days to answer.

22 On further motion of proctor for libellants, it was ordered that default of all parties not in court be, and the same is hereby, entered.

(Endorsed:) Filed and entered Ap'l 14th, 1868.
GEO. E. WHITNEY, *Clerk,*
By H. F. LARDNER, *D. C.*

Answer.

U. S. district court, district of California.—In admiralty.

N. C. ERLANDSON AND WILLIAM H. HENDRY, libellants,
vs.
THE SCHOONER "OCEAN SPRAY," HER TACKLE, apparel, and furniture, and George Kentfield, master and owner.

To the Honorable Ogden Hoffman, judge of the district court of the United States in and for the district of California:

George Kentfield, master, owner, and claimant of the schooner "Ocean Spray," her tackle, apparel, and furniture, intervening for his interest in the same, for answer to the libel of Nicholas C. Erlandsen and
23 William H. Hendry, filed herein, allege as follows:

First. Respondent, for answer to the first article of said libel, denies each and every allegation and averment thereof.

Second. Respondent, for answer to the second article of said libel, admits that the schooner "L. C. Lane" left the port of San Francisco on the 27th day of February, 1868, for a voyage to the port of Mendocino, with the libellant Nicholas C. Erlandsen as master; but respondent denies that said schooner was fully and properly manned and equipped for said voyage, as is alleged in said article.

Third. Respondent, for answer to the third article of said libel, denies each and every allegation and averment thereof, except as hereafter admitted in answer to the third article. Respondent denies "that the 'L. C. Lane' was entering Little River Harbor, being on the inside of the reef, close hauled on the wind, the 'Ocean Spray' overtook her, (said 'L. C. Lane,) said 'Ocean Spray' being outside of the reef, sailing free," as alleged in said article. Respondent further denies "that said schooner 'Ocean Spray' attempted with a free wind to cut across said reef and get into said harbor in advance of said 'L. C. Lane.' He further denies that at that time said 'L. C. Lane' was sailing on the wind, close hauled, having a ledge of rocks to leeward of her, so that she was
24 unable to pay off to leeward. He further denies that, in attempting to cut across said reef, and to get in advance of said L. C. Lane, said 'Ocean Spray' was so carelessly and negligently handled by her master and officers that she run into the said 'L. C. Lane.'" Respondent, for further answer to said article, admits that the said schooner "Ocean Spray" collided with the said schooner L. C. Lane on the day mentioned in said article, but denies that said collision took place by the fault, carelessness, or negligence of the master, officers, or men, or any or either of them, having charge of said schooner "Ocean Spray" at the time of said collision.

Fourth. Respondent, for answer to the fourth article of said libel, denies each and every allegation and averment thereof. He denies "that said L. C. Lane was so run afoul of and destroyed by the wilfull negligence or carelessness of the master and officers of said 'Ocean Spray.'" He further denies "that said collision took place" without any fault "on the part of the master or the officers, or any of them, or crew, or any of them, of said L. C. Lane." He further denies that the damages sustained to said libellants in the destruction of said schooner L. C. Lane by said negligence and carelessness is the sum of twenty thousand dollars, ($20,000 00,) or any other sum whatever.

25 Fifth. Respondent, for answer to the fifth article of said libel, admits the same to be true.

Sixth. Respondent, for answer to the sixth article of said libel, denies that all and singular the premises are true as stated in said article.

Seventh. Respondent, for further answer to said libel, alleges as follows: That he is the owner of the schooner "Ocean Spray," and was the master thereof on the 4th day of March, A. D. 1868; that said schooner, on the day aforesaid, was engaged in navigating the high seas, and was tight, staunch, and strong, and fully and completely manned and equipped for the purposes of said navigation; that while said schooner was in the act of entering the harbor of Little River, on the day aforesaid, she collided with the schooner "L. C. Lane;" the said collision was occasioned by the careless, negligent, unskillful, inattentive, and reckless manner in which the said schooner L. C. Lane was navigated by the master and crew thereof, and not from any fault, omission, neglect, or want of skill and attention on the part of the master and crew, or any or either of them, the said schooner "Ocean Spray."

Eight. That all and singular the foregoing premises are true.

Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid and to condemn
26 the libellant in cost, and otherwise law and justice to administer in the premises.

GEORGE KENTFIELD.

J. B. MANCHESTER,
Proctor for Respondent.

Sworn before me this 23d day of April, 1868.

S. NEALL, *U. S. Com'r.*

(Endorsed:) Filed Ap'l 23d, 1869.

GEO. E. WHITNEY, *Clerk*,
By S. NEALL, *D. C.*

Order of trial.

At a stated term of the district court of the United States of America, held in the city of San Francisco, on Thursday Aug. 20th, A. D. 1868:

Present, Hon. Ogden Hoffman, district judge.

(Title of cause.)

And now, at this day, this cause having been specially set for trial, is now proceeded with, Cutter McAllister, esq'r., proctor for libellants, and E. B. Mastick, esq., and J. B. Manchester, esq'r's, proctors for claimants, being present and representing the respective parties.

N. C. Erlandsen, C. Smith, and [and] James McClellan were
27 sworn and testified on behalf of libellants, and Geo. Kentfield was sworn and testified on behalf of claimants.

On motion of C. McAllister, esq., and consent of proctors for claimants, ordered that the depositions heretofore taken in this cause, on behalf of the respective parties, be opened and filed, and that the further trial of this cause be postponed until to-morrow.

At a stated term of the district court of the United States, district of California, held in the city of San Francisco, on Friday, August 21st, A. D. 1868:

Present, Hon. Ogden Hoffman, dis. judge.

N. C. ERLANDSEN ET ALS.
vs.
THE SCHOONER "OCEAN SPRAY," ETC.

And now, at this day, the trial of this cause is continued from yesterday, the parties and their respective proctors being present.

Henry M. Hayward, A. Tammerge, James Coghill, Thomas W. Badger, J. W. Baker, and A. S. Josselyn were sworn and testified on behalf of claimant, and the further hearing of this cause was continued until tomorrow, Aug. 22d, 1868.

28 *Order of submission.*

At a stated term of the district court of the United States, district of California, held in the city of San Francisco, on Monday, Aug. 24th, 1868:

Present, Hon. Ogden Hoffman, district judge.

N. C. ERLANDSON ET AL.
vs.
THE SCHOONER "OCEAN SPRAY," ETC.

This day having been specially set for the argument of this cause, J. B. Manchester, esq'r., proctor for claimant, and Cutter McAllister, esq'r., proctor for libellant, addressed the court on behalf of their respective parties, and, on motion, the cause was submitted on briefs, to be filed within ten days.

Order of reference.

At a stated term of the district court of the United States, district of California, held in the city of San Francisco, on Tuesday, Sept. 29th, A. D. 1868:

Present, Hon. Ogden Hoffman, district judge.

N. C. ERLANDSEN ET AL.
vs.
THE SCHOONER "OCEAN SPRAY," ETC.

29 And now, at this day, the court delivered its written opinion herein, and it is ordered that judgment be entered in favor of libellants and that the cause be referred to Geo. E. Whitney, a commissioner of this court, to report the damages sustained by libellants.

Judge's notes of testimony.

N. C. ERLANDSEN ET AL.
v.
SCH'R "OCEAN SPRAY."

Nicholas Erlandsen:

Master and part owner of the "Lane;" "Norwegian;" been to sea 20 years; "Lane," 10 mos. old; crew, 7 all told—capt., mate, cook, and four seamen.

Been running on coast 5 years; "Lane's" 92 tons register; she had usual complement of men for vessels of her size; she was in the best

condition as to equipment, &c.; had recently been put in complete order; had spent 600 dollars on her; started on last voyage February 29th, bound for Mendocino Harbor; run there regularly; was chartered to run there until November.

About 8 a. m., March 4th, saw a sail to windward; N. W. wind blows right along the coast; I was off the mouth of the harbor; I was steering N. E. by compass; was then ten or 12 miles off
30 G. E. W. Cl'k., By A. D. G., D. C. the land. The sail was five or six miles to windward of me, as near as I could judge; I steered N. E. for the land; got within ½ a mile of the harbor about noon. Saw flag hoisted at half-mast; supposed it too rough to enter. I dropped my mainsheet, and kept the vessel off before the wind, intending to go right along the coast to Little River Harbor; just before getting to the N.W. point of Little River Harbor I was compelled to gibe my mainsail; in doing so, I carried away my main sheet; I lowered my mainsail to reeve a new sheet and headed her off shore; as I was close in, I could not get round N. W. point of harbor; stood off about 1 & ½ mile, then lowered my foresail to wear ship; I then headed right into Little River Harbor; I then hoisted the mainsail. The "Spray" was, as near as I could judge, a mile and ½ or more to N. W. of me, or W. N. W. to windward; we had 7 passengers on board; they lent a hand 10 or 15 minutes from time we hoisted mainsail until collision; was on the wind at time of colli
G. E. W., Cl'k., By A. D. G., D. C. sion. Have been into Little River Harbor before; ran there regularly for nearly a year.

The usual course is to run down until the harbor is in sight, and then go in on the wind. When I got on wind, saw vessel coming before wind with reefed mainsail, foresail, and jib; anticipated danger about two minutes before she struck me; didn't expect he would run me
31 down; as far as I could judge from where I was, she must have gone right over the northerly ledge of rocks; she struck us with her bow on our port main chains; she cut a big hole in our side below water line. The "Spray" swung alongside of me on my port quarter to windward. We were together some two or three minutes, both vessels drifting into the harbor. I sang out to him to lower jib down and give me a chance to range ahead; nothing was done; the vessels separated outside of the rock; I caught on the rock; the "Spray" went up between the rocks; I cut the wire rigging of the Spray—martingale stay; our main throat halliards had been cut by the collision, so that our mainsail hung by the peak. The "Spray" had all sail set; we were so far to leeward, we went on the rock; remained there a minute or a minute and ½; she then went ashore on the southerly side of the harbor; water coming very fast; hole large enough for a man to go through on horseback; tried to stop it with mattresses, bed-clothes, stay sails, &c.; couldn't do so. It was pretty near night; sea breaking over her; had to leave her; the sea breaks on the S. shore with N. W. wind. The next day it blew so hard couldn't do anything, except to take sails and
G. E. W., Cl'k., By A. D. G., D. C. running rigging ashore; had cargo on board; rough for three days; couldn't get alongside with a boat; could do nothing.

After the weather moderated, got men to assist to throw out ballast; could only work at low water.

32 Hired men to help get out big anchor and a hawser to the buoy to try and heave her off; tried a number of days; her keel was
G. E. W., Cl'k. By A. D. G., D. C. gone; could see it at low water; tried a number of days; could not succeed; at last gave it up; broke up pretty much before we gave it up; the whole bottom was out of her. The

"Lane" at collision was ten or twelve yards from northerly ledge of rocks; distance from N. to south ledge of rocks about 3 or four hundred feet; vessels always hug the northerly ledge with N. W. wind; the rule is, that the first vessel in gets loaded first; can only load one vessel at a time. It takes generally 2 or 3 days to load; with a S. E. storm, cannot get out of the harbor. I know the "Ellen Adelia;" she was running into Little River Harbor last winter; I have seen her there and reported there a great many times; she was there at time of collision.

G. E. W., Clk., By A. D. G., D. C. The same evening after the collision, Capt. Kentfield told me he had no idea my vessel was the "Lane;" though her the "Ellen Adelia;" that he would show a Dutchman how to get into port; that he would learn us to look out for what was coming behind; that his vessel was a regular monitor.

Cross-ex.:

First saw the Spray about 8 a. m.; she was about five miles off to W. N. W.

33 I continued steering N. E. by compass until about (noon) 12 m. The "Spray" was standing in on same tack as I was; at noon, when I changed my course, she was more than three miles off; changed my course because I saw flag at ½-mast; from Big River Harbor to Little River Harbor, about 3½ miles; was going about seven knots an hour before main sheet parted. The "Spray" was outside of me before wind coming down coast; I jibed the mainsail because I was too close in, ran out about a mile and ½; I hoisted my mainsail as soon as I wore ship; the mainsail was hoisted at time of collision; all of ten minutes elapsed from time I wore ship until collision. The sea was a little rough, nothing to speak of. The mainsail had been up about 8 minutes before he struck me. I noticed the "Spray" about 2 or 3 minutes before the collision; did not know what vessel it was till 2 or 3 minutes before the collision. 3 or 4 minutes before the collision it was not too late for her to change her course, so as to avoid collision.

We were together a very few minutes; the distance from the rock to the place where I went ashore was about 100 feet. I might have anchored the vessel; can't tell how much it would have cost to raise my vessel, if I had anchored and let her sink. I did all in my power

34 to save my ship; worked night and day. Capt. Kentfield told me to sue; that it didn't cost him anything to go to law, that he paid his lawyer by the year.

The greater part of our conversation took place in a store in Little River.

Direct resumed:

Had from ten to twelve men working to save the vessel after she went

G. E. W., Clk, By A. D. G., D. C. ashore. (Diagram produced and shown court and witness, and marked Exhibit "A.")

(Here follows diagram marked page 34.)

Charles Smith:

Mate of the "Lane;" 4 men, cook, mate, and captain; saw the Spray five or six miles to windward when we were steering for land. 2 miles from land; went within ½ mile of land, flag at ½-mast; squared off for Little River; run two or two and one-half miles, we gibed mainsail, parted main sheet, too close to shore; we ran off shore about two miles. As soon as we got main sheet rove, hoisted mainsail, lowered foresail, stood in for Little River. Spray was about two miles to windward off us. From the time we hoisted mainsail and stood in for Little River Harbor

until collision, about 10 minutes; just apprehended danger when we saw her crossing reef, about a minute before collision. Her bows struck fore part of our port main chains. She cut us right down; cut a big hole down to water's edge. We tried to stop it with mattresses,
35 sails, &c.; couldn't stop it, hole too big. Spray swung alongside; both vessels ranged down the harbor; we went on rock, swung off and went ashore. That night it blew to hard to do anything; next day took sails and running rigging, blowing very hard from N. W.; could only work at low water; water washed all over her at high water.

Next day threw some of the ballast out; we got her anchor out and hawser to buoy; chain parted and she swung over inside of the rocks. At the time of collision we were about middle of channel, between two ledges of rocks. "Ellen Adelia" was in the harbor at the time.

Cross-examined:

Have been there since collision; saw the "Lane" there. They were tearing her to pieces; a co. bought her; they are breaking her up. Got the mainsail set a minute or two after we wore round; hoisted it right up, with so many men on board. I think the "Spray" was going ten miles an hour; the sea was not very rough; have seen it rougher; no breakers about the mouth of the harbor; of course there were breakers on the reef; he got into breakers when he crossed the reef; we were going about 4 or 4½; we had the wind on our port quarter after we had wore around. When we got up to reef, we hauled in main sheet
36 and brought her on the wind to go into harbor; this was about a minute before collision. We hoisted our peak outside when we hoisted the sail; we were a mile or two off. The Spray was not at that time nearer the harbor than we were.

G. E. W. Cl'k. By A. D. G., D. C. The Spray had foresail, mainsail, and jib; she had wind a little on her fore port quarter.

James McClellan, shipwright:

Was passenger on Lane at time of collision. Saw the "Spray" that morning; she was to windward of "Lane," 5 or 6 miles off. She ran until flag hoisted at ½-mast; she then about a couple of miles down, gibed boom, parted her main sheet, stood out 1½ or 2 miles, under foresail and jib; she then wore round. I saw the "Spray" about ½ way to "Mendocino," about as far from the land as we were. We hoisted the mainsail at once; some of the passengers assisted; sail was set, peak hauled up; collision occurred 10 or 13 minutes after. I should judge we were then about a mile from point of collision. I think the wind was forward of the beam; after we wore round struck us about main chains; cut us down to the bilge, 2 or 3 streaks on deck; I went in and out the hole afterwards; I jumped aboard the "Spray." I had no idea of collision until just as it occurred; thought she would go outside of
37 us; cut away wire rigging; "Lane" shot ahead a little; "Spray" went in between 2 rocks and anchored; "Lane" got on a rock; beat over it; considerable sea on; "Lane" went on rocks on southerly side of harbor.

Saw her there two or three days; saw no chance of saving her; too rough to work; she was sold; heard so.

Cross-examined:

G. E. W. Cl'k. By A. D. G., D. C. We wore round under jib and then hoisted mainsail. After we got mainsail up, I noticed the "Spray;" she was then
G. E. W., Cl'k. By A. D. G., D. C. about a mile or a mile and ½. She was just about on a line with us, a little nearer land perhaps. We had the wind abeam or a little foward of it when we got our mainsail hoisted.

Depositions offered in evidence, taken before a notary and without notice.

Depositions admitted.

Captain Erlandsen, recalled:

I sold the "Lane" at public auction, for the benefit of whom it might concern, for $370; was not interested in the purchase.

Posted notices at Mendocino, at the Albion, at Little River. I sold to a company.

38 Claimants call George Kentfield:

Master and owner of the Ocean Spray. On the morning of March 4th my vessel was about 10 miles off the Noyo; we were 15 or 20 miles off shore.

I was steering to make land; about 10 o'cl'k saw the flag at Mendocino. The Lane was then 3 miles ahead of me; saw him before that when he hauled his wind and headed for Mendocino. When he went off, I made sure he was going into Little River Harbor; he was then 4 miles off. The next I saw of him he had lowered his mainsail. I was then off Mendocino Point; my course was E. by S. I told the mate to hoist foresail as that vessel was not going in; I was then 3½ miles off; my orders were obeyed; I took the wheel, run along 8 or 10 minutes, and looked for him again. I came to the conclusion that he was going to luff and see me go in; gave him one look and then looked ahead to keep my course. In about a minute I looked again; his peak was down, he was about a half mile from me, ahead and on the outside.

G. E. W., Cl'k. By A. D. G., D. C. I made up my mind he was going to luff to and swing her off shore; never looked at him again after that. My mate sung out to me that he was hoisting his peak and coming in the hole; coll on occurred a minute or a minute and ½ after that. I had

39 struck the ground swell before he raised his peak. When you get into ground swell you cannot manage your boat; you've got to let her go.

When he put his mainsail down it was an indication he was not going in, and when he put his foresail down I was certain. When he put his peak up it was too late; I had taken my course, had to let her go as she pointed. I suppose the mouth of the harbor is about 300 feet across. Have been in Little River Harbor 4 times; running vessels on the coast 7 years. Vessels not four lengths apart when mate sung out he was hoisting his peak. I could not do anything then, but would have cleared him if a sea had not struck my port quarter, slewed me round like a top. He was about ¾ of a mile outside of me.

You cannot find a man on the coast who would say that after she lowered her foresail, there was the least reason to suppose she was going in the hole. He had ample opportunity to go in ahead. I asked why he did not drop the peak of his foresail and gibe his mainsail. He said the law was on his side, that he was ahead, and I must look out for him.

Cross-examined:

I saw the mainsail hoisted on the "Lane." This was four or five or six minutes before the collision. She was about a mile off. I was astern of him; she was heading about the same as I was, down the coast,

40 before the sea. I looked again about a minute after, her peak was down heading down the coast; never looked at her again until I heard she was hoisting her peak and coming in the hole. When I last

looked at her, it was about 3 minutes before the collision. I was just in the ground swell.

The sea ran in from about west, was in the ground swell 2 or 3 minutes.

He might have anchored his vessel after he got off the rocks. If so he would not have lost her; could have put her in order for $1,200. The next day it was blowing about the same, not quite so much; couldn't get to work at her except at low tide. I suppose he done all he could to save her after she got on the beach. G. E. W., Cl'k, By A. D. G., D. C.

Captain Kentfield, recalled:

The "Spray" is 83 tons register; she was in good order, fully manned. Two days after collision, a man said to me, "You are a bully fellow to race over rocks and I'll take a passage in your schooner." I said, "She is a monitor, and when they saw her coming they all turned tail and run away." Conversation not serious.

G. E. W., Cl'k, By A. D. G., D. C. The northern ledge of rocks runs out about 300 feet. The men on shore all dropped work and said, "Here's a race, boys." They all hurrahed; they run and holloed. He must have
41 been ½ mile off shore when he hauled down his mainsail. I never changed my course from the time he hauled his mainsail down, until they sang out to luff. I figured he was not going in there sure, and never knew the difference until I fetched up against him; saw his boats were painted black; I thought her the "Ellen Adelia." I did not suppose she was going in at all after she lowered her mainsail. It was no supposition, I new it. After she lowered her mainsail, there was nothing she could do to convince me she was going in that hole. I never said I was trying to get ahead, they were talking about running a race. I said, "Is a man going to jump his boat over the rocks?" I put more sail on my boat to get through the breakers. This was off Mendocino. This was after he had hauled his wind, hauled his mainsail down; I made up my mind to go in, put down my centre-board. I called my mate and said, "That's the 'Annie Adelia,' and she's afraid to go in. Give her more canvass, for I'm going in that hole." It was ten minutes before I looked at him again, I was then a mile or a mile and ½ from shore; his foresail was down and he was beginning to hoist his mainsail. I came to conclusion that he was going to luff and come to under my stern. He was then 1½ miles off.

I ran about a minute, looked at him, found he was too far in shore to luff, and see me go in; he had his peak down and his jib up. He was then about ¼ of a mile off shore.

42 If I had had any idea he was going in, I would have jibed my vessel. I felt very confident he was not going in. I did not look at him again until my mate sung out that he was coming in the hole; he sung out luff, and then hard down; that may have been about 3 minutes after I last looked at him. The collision occurred about 3 seconds or ½ minute afterwards. G. E. W., Cl'k, By A. D. G., D. C.

I did not look at her because I had to get the range to see how near I could come. The peak was up when I struck him. I was in the breakers when the mate called out. The breakers took me right down on him. The breakers were out perhaps 3 to 600 feet.

Henry M. Hayward:

Mate of the "Ocean Spray;" wind N. W.; first saw "Lane" about 8 or 9 a. m., about 5 miles off; both vessels heading in shore; we were heading for Mendocino; at the time she headed down the coast, she

was about two-thirds the way from Mendocino to Little River Harbor, when she stood off shore and hauled down her mainsail. We thought she was going to reef; any one would have thought so. Captain told me to give her the foresail, and we kept off a little so as to lay our course for the point. Did not pay any more attention to her until we were about half-way down; she was standing off
43 G. E. W., Cl'k. By A. D. G., D. C. shore, under foresail and jib. I think we was further off shore. We were going 10 knots; she might possible have been going two knots. She was then a mile or a mile and ½. The capt. said, "That man is not going in, shake out the reef out of the foresail." When I last saw her she was three or 400 feet ahead of us, 3 or 4 points on our starboard bow. She was heading down coast; her peak was down. I saw her hoist her peak a minute after sung out to luff. This was the first indication I had she was going in. I am sure Capt. Kentfield paid no attention to her from the time she hauled down her mainsail until I called to him to luff, when the collision was inevitable. The capt. was at the wheel.

It is the custom of the coast not to pay any attention to a vessel that has crossed your track, and is standing off shore, for the reason that she is out of your way. After I had sung out to capt., I had just time to run aft to mainmast when collision occurred. He luffed right across our bow; nothing but his luffing caused the collision. Perhaps if it had not been for the breaker he might have got by us. It is customary to carry all the sail you can in going into that
G. E. W., Cl'k. By A. D. G., D. C. harbor. He could have dropped his anchor when he swung off the rock, no necessity for his going ashore; never ran a hawser out until next day. I do not think she was cut under her water line; $1,200 would have paid all the damage we did to
44 her. There is not a more poorly built vessel on the coast. Her ceiling was 3 inch—4-inch clamps; very inferior to other vessels of her class. Nothing was said or done with a view of getting in ahead of her. We had single-reef foresail, double-reefed mainsail, and jib. This was all the sail we could carry; we had no idea of beating her. The captain remarked it was the "Ellen Adelia." Have been six years on this coast; have commanded vessels. Nothing was done or omitted by us which caused this collision. I think Capt. K. did just as I would have done, or any man on this coast. In my judgement, the collision was caused by the want of judgment of Capt. Lane, in endeavoring to cross our bow when he couldn't do it by ½ length.

Cross-examined:

Have been in claimant's employ since collision—master of "Ocean Spray;" think Lane had flying jib on when she bore away; do not know whether her sails were reefed when she lowered her mainsail; I thought she was going to reef going off shore. The fact of her standing off shore, and lowering her mainsail, induced me to think she was not going in; she was then a mile or less or more off shore. She was two miles inside of us. I could not say whether she was far enough
45 out to get around the rocks. Not knowing the accident was to happen, did not pay much attention. We might have got in with a double-reefed foresail, but a man naturally carries all the sail he can when going into that harbor. When she lowered her mainsail and stood out, we were 3 or four miles off from her. I saw her again about 2 minutes after; she was still standing out. When I noticed her again, she had wore around and was running with peak down. She was heading down the coast the same as we were. She then hove her helm down and hoisted her peak, and we got on top of the sea and came into

us. This was just before collision, just time for me to leave night heads and run aft to mainmast; I paid no attention to her between the second and 3d observations I made. Whatever lookout was kept, I kept; all hands might have looked out and I not know it. We had no regular lookout. I am very positive she was not pointing directly into harbor a minute before collision. If the collision had taken place where it is marked with red ink on Ex't A, the vessels would never have gone into the harbor. This does not mark the spot where the collision occurred. When I noticed her with her peak down, she was very short distance from place of collision. The sea took us, it might be 90 feet from place of collision; could not say definitely.

46 Up to that time the vessel was manageable; if I had seen her luff a minute or two before, we could have gone down under her stern. We were going 4 times as fast as she; she was not going more than two miles an hour. Don't know how the "Lane" rated; if she rated A No. 1, should say it was absurd.

A. Tommeleige:

Am a shipmaster for 3 years, going to sea 16 years; have been on the coast 6 years; commanded the schooner Susie Johnson; I was 30 or 40 miles off shore when I first observed "Lane." At time of collision I was 5 or 6 miles from the vessels. The Lane was about 10 miles ahead of me up to the time when flag was hauled down; saw her bear off, haul her mainsail down, afterwards her foresail; she then headed down under jib only; kept this course about 5 minutes. She was then a mile & ½ off the point; the "Spray" was then from 3 to 5 miles off from the point of rocks; at the time the Lane was standing down she was then about opposite the mouth of the channel; she then hauled up, hoisted her mainsail and stood in for the [the] harbor; she may have been a mile & ½, 2 miles from the point of rocks; the Lane stood in and the Spray came into her. When the Lane hauled up and stood into the harbor, she must have been 2 miles out, making about from ½ to 2 miles per
47 hour. While setting his mainsail, the Spray was then 4 or 5 miles off.

G. E. W., Cl'k, By A. D. G., D. C.

I thought when he stood out that he was not going in, that it was too rough; it would indicate it to any one. His lowering his foresail confirmed my opinion until I saw him haul in and set his mainsail; when I saw him haul in and set his mainsail, then I knew he was going in; he did this about ½ an hour before collision.

He ran down before the wind under jib about 10 minutes. I then supposed he was going into the Albion; when she hauled up and set her mainsail, I knew she was going in; the captain of the "Spray" gave her more sail after the "Lane" had stood out. I saw no lack of judgment or seamanship on part of "Spray." It was not necessary, in that wind, to crowd all sail to get in.

If I had been coming in as the "Spray" was, I should have done my best to get in first, and get my load first; if I had missed it and cut him down, I should have had to stand the consequences. The "Lane" was ahead, and had the first right to go in.

James Coughell:

G. E. W., Cl'k, By A. D. G., D. C.

Seaman for 15 years; on this coast eight years; have seen Little River Harbor 5 or 6 times. It was pretty rough that day.

48 Thomas W. Badger:

Shipmaster 16 or 18 years; sailed on this coast 8 or 9 years. If I saw a vessel in position of "Lane" haul down sail and run off shore, I should think she was not going in; if, after she had got out, she were to stand in again, it would depend upon how near we were whether I would look out for her.

J. W. Baker:

Seafaring man; master of barks, brigs, and schooner; have never been in Little River. Lowering mainsail and standing off would indicate that vessel was not going in. I should make sail and go in. If I had been in position of "Lane" and had hauled out, I should use my judgment, when I put canvas on to go, to see whether I could go in ahead of the other vessel. Perhaps the "Lane" miscalculated the distance, or her speed.

G. E. W., Cl'k, By A. D. G., D. C.

Captain Jocelyn:

Am acquainted with this coast; if the Lane was very close in, I should think he might be wearing ship to get further out; if she lowered her foresail too, I should think something was the matter. Customary for the captain to take wheel. It would require all his attention to keep
49 his ranges; I should keep my eye on the other vessel as well as on the ranges. If I were ahead, off the mouth of the harbor, I should think I had a right to the preference and to get in. In going into one of these places, a master's attention is confined to his ranges.

50 *Deposition of J. M. Grimmer.*

J. M. Grimmer's deposition for libellant:

JULY 10TH, 1868.

Ques. 1. What is your name, age, residence, and occupation?

Ans. My name is J. Mellville Grimmer; 24 years of age; San Francisco; occupation, seaman.

Ques. 2. Do you know the schooner "Ocean Spray," and have you ever sailed on her; when, and in what capacity?

Ans. I know the schooner; I have sailed on her; don't remember the exact time I joined her; I was on her at the time of the collision, in the capacity of seaman.

Ques. 3. State when, on the day of the collision, you first saw the "Lane," and where she was from your vessel.

Ans. It was some time in the forenoon I saw her first; she was about five miles from us, to the leeward of us, standing in shore, heading in shore towards Mendocino; I saw her when she headed off from Mendocino.

G. E. W., Cl'k, By A. D. G., D. C.

Ques. 4. When she headed off from Mendocino down the coast, where was the "Spray," and in what direction did both vessels head
51 at that time?

Ans. I can't tell exactly how far we were apart, but they were both heading down the coast—that is, after the "L. C. Lane" kept off from the port of Mendocino.

Ques. 5. When did the "Lane" change her course; in what direction did she change it; and where was the "Spray" at that time?

Ans. When the Lane changed her course, she ran down along the coast, until she got close to Little River Harbor; she changed her course and stood off shore to the southward and westward. I can't say how far she stood off; she then rounded to, heading in shore.

G. E. W., Cl'k, By A. D. G., D. C.

The Spray was about 2½ or 3 miles to westward of her, as near as I could judge, when the Lane stood off.

Ques. 6. State where the "Spray" was when the "Lane" rounded to, and stood in shore.

Ans. When the "L. C. Lane" commenced to make sail, and stand in shore, the "Spray" was a mile and a half, or thereabouts, to the windward of her.

Ques. 7. How long was it from the time the "Lane" commenced to stand in shore to the time of collision?

Ans. It was about 7 or 8 minutes; a very short time.

52 Ques. 8. From the time the "Lane" stood in shore to the time of collision, how did each of the vessels have the wind?

Ans. The "Spray" had the wind fair, aft; and the "Lane," at the time I saw her, had a free wind.

Ques. 9. Look at Exhibit A to deposition of "Thompson," and state if it correctly represents the manner in which the vessels collided.

Ans. As far as this goes, it is correct.

Ques. 10. What portion of the "Spray" came in contact with the "Lane," and where?

Ans. The forepart of the "Ocean Spray" struck the "Lane" about amidships, (the forward part of the vessel.)

Ques. 11. At the time they came together, how did the "Lane" have the wind, and how the "Spray?"

Ans. The "Spray" had the wind fair. I should suppose the "Lane" was pretty close on the wind; but I have never been in Little River Harbor before.

Ques. 12. After the collision, what became of the Lane, and what of the "Spray?"

53 Ans. The "Lane" ranged in ahead of the "Spray;" she struck against a rock at the mouth of the harbor, the sea hove her off the rock, she went into the harbor, and went ashore on the lee side of the harbor. The "Spray" followed her in, and came to anchor inside the harbor.

Ques. 13. What damage, if any, was done to the "Spray" by the collision?

Ans. Her head gear was carried away, flying jibboom, jibboom guy.

Ques. 14. At the time of collision what reefs, if any, did the "Spray" have in her sails?

Ans. Full foresail, mainsail, and jib. The mainsail might have been reefed.

Ques. 15. How long before the collision had the "Spray" shaken out the reefs of any of her sails?

Ans. I can't say how long before; but we were considerably to windward of the "Lane," at the time we shook the reef out of our foresail.

Ques. 16. What was said by the captain of the "Spray," if anything, about shaking out the reef of the foresail?

Ans. I don't remember what the captain said; it was the mate

54 that called me to give a hand.

Ques. 17. At that time, what did the mate say?

(Ans. Questions objected to, on the ground that we are not responsible for the sayings of the mate, whatever may have been said.)

Ans. I don't remember any particular remark he made.

Ques. 18. Do you remember the capt. saying he wanted to overtake that vessel ahead, or words to that effect?

Ans. I do not know any more than he said, "I should like to know what vessel that is."

Ques. 19. Did you, after collision, hear Capt. Kentfield say anything about his leaving the vessel to the windward of him, to be the "Ellen Adelia?"

Ans. I did not.

Cross-examination:

Ques. 20. Please to look at exhibit marked "A" to deposition of Thompson, which has been shown you, and state whether the vessels that are marked on said exhibit are, as you now recollect their positions,
55 from the time the "Lane" headed down the coast, up to the time of the collision.

Ans. As near as I can remember, they are.

Ques. 21. You have stated that the "Lane" changed her course just before getting to Little River Harbor; did she at that time haul her mainsail down?

Ans. Yes, she did. It was some time during the time she was changing her course to stand off shore.

Ques. 22. Did she, in standing off shore, cross the track of the "Spray;" and if so, how far, as near as you can now judge, did the "Lane" go outside of the Spray?

Ans. He was inside of us, and stood off shore keeping to the leeward of us all the time; but how far to the leeward of us, or how far off shore, I can't say.

Ques. 23. When the "Lane" lowered her mainsail down and stood off shore, as you have stated, I ask you, as a nautical man, if that did not indicate that she did not intend to go into Little River Harbor?

Ans. In my own judgment, I didn't think she was.

Ques. 24. What time was it that the "Lane" lowered her foresail, if she lowered it?

56 Ans. She was heading in shore off the mouth of Little River Harbor when she lowered her foresail, and, about the same time, she commenced to hoist her mainsail.

Ques. 25. What would the lowering of the foresail indicate?

Ans. I don't know hardly what it would indicate with a vessel standing in shore as she was at the time.

Ques. 26. How long was it, in your judgment, after he had lowered the foresail, and commenced to hoist the mainsail, before the collision?

Ans. I can't state exactly; we went about a mile and a half.

Ques. 27. Had the "Lane" her peak down, and when was it taken down?

Ans. For my own part, I don't think the mainsail was ever entirely up.

Ques. 28. Was not the collision occasioned by a sea striking the "Spray," and throwing her into the "Lane."

Ans. At the time we struck the "Lane," we were right on top of a sea.

Ques. 29. After the "Lane" lowered her foresail, as you have
57 stated, was it possible for the "Spray" to have done anything by which the collision could have been avoided?

Answer. She could, but there would have been great danger of taking both the masts out of her.

Quest. 30. Was not the collision occasioned by the "Lane" (after she had gone off shore, as you have stated) rounding to and attempting to enter Little River Harbor?

Ans. If the L. C. Lane had not been there, there would have been no collision. If the Spray had been ½ minute ahead, there would have been no collision.

Quest. 31. Could not the Lane, after she changed her course and stood off shore, have kept off, if she had seen fit, until the Spray had entered the harbor?

Ans. If she had gone far enough ahead when hauling off shore, most undoubtedly she could.

Quest. 32. Was not the Spray, at the time the Lane rounded to, in the breakers?

Ans. No, sir, she was not; she was to the windward of them, but pretty close down.

Quest. 33. How soon was it before she got into the breakers after the Lane lowered her foresail?

58 Ans. I can't say. I don't know how far out the breakers extend. I think the wind was blowing fresher in the afternoon than it was in the forenoon, and fresher just before the collision. There was a pretty heavy sea running at that time.

Direct examination resumed:

Quest. 1. Did you at any time before the collision loose steerage-way or control of the "Spray?"

Answer. Not before we got on the sea which carried us into the "Lane."

J. MELLVILLE GRIMMER.

Sworn and subscribed before me this tenth day of July, A. D. 1868.

H. F. LARDNER, *U. S. Com'r.*

59 *Deposition of Christian Brown.*

Quest. 1. Your name, age, residence, and occupation?

Answer. Christian Brown; 35 years old; live in San Francisco; and am a master mariner—master of the schooner "May Queen."

Quest. 2. Were you lying in Little River Harbor on the 4th of March last?

Ans. 2. I was. Had a full view of the entrance of the harbor. I know both the Spray and the "Lane." The first vessel I saw was the L. C. Lane, heading N. E. for Little River Harbor. About 3 or 5 minutes afterwards I saw the schooner Spray coming before the wind steering about E. S. E. The next thing that occurred, about 1 minute after I saw them both, the collision occured. The bow of the "Ocean Spray" struck the Lane amidships on the port side. After a while they got apart again, and both entered the harbor of Little River. The L. C. Lane went on the rocks on the lee shore. The Lane first got on the rocks on the lee side. The capt. got her off and tried to make the sand beach. Not having the control of the vessel, she kept off to much and went on the rocks. Capt. brought a hawser and tried to get her off; the mooring wouldn't hold, and he had to let go his hawser.

60 Afterwards he brought out an anchor on which he parted his chain. I have been to Little River constantly for the last year or 18 months.

Quest. State whether, in coming in, the Spray followed the course usually taken by vessels entering the harbor from the northward.

Answer. Not until the collision. The difference was that the course is N. E. by N. She was steering at the time about E. S. E.

Quest. State whether or not, in coming in, she gave the northerly reef of rocks the usual berth.

Ans. As near as I could see she went over the reef, and I think this was the cause of the collision.

Quest. Do not vessels in entering the harbor from the northward give that reef a much wider berth than the Spray did?

Answer. As near as I could see she didn't give it any berth, but every vessel has got to go pretty close to get into the harbor.

Quest. At the time of the collision, how did the Lane and the "Spray" have the wind?

61 Answer. They both had the wind N.W. The Lane had the wind abeam on the port side, and the Ocean Spray was right before the wind, or nearly so.

Quest. At the time of the collision, how far to the leeward of the Lane was the southerly ledge of rocks at the entrance?

Answer. I don't know the exact distance. The entrance is about a cable's length.

Quest. Look at Exhibit "A" to deposition of Thompson, and mark in red ink the position of the vessels at the moment of collision.

Ans. It is pretty near as marked down by Capt. Scott in red ink.

Quest. After the collision, did you or not hear Capt. Kentfield, of the Spray, in Little River, state he thought the Lane was the Ellen Adelia, and he wanted to get in before her?

Ans. I heard him state that he thought the Lane was the Ellen Adelia; but didn't hear him say anything about wanting to get in before her.

G. E. W., Cl'k, By A. D. G., D. C.

62 Quest. Did you in Little River hear Capt. Kentfield, of the "Spray," say he was going to learn the Dutchman how to get into Little River Harbor?

Ans. Yes; I heard him say that.

C. BROWN.

Sworn & subscribed before me this tenth day of July, 1868.

S. NEALL, *U. S. Com'r.*

(Endorsed:) Filed Aug. 20th, 1868.

GEO. E. WHITNEY, *Clerk*,
By S. NEALL, *D. C.*

63 *Deposition of Peter Thompson.*

Peter Thompson's deposition taken by claimants:

Quest. 1st. What is your name, age, profession, and place of residence?

Answer. Peter Thompson; twenty-five years; seafaring man; San Francisco.

2d. How long have you been a seafaring man?

Answer. Eleven years.

3d. Do you know the schooner "Ocean Spray;" and, if so, how long have you known her?

Answer. I have known her about a year. I have been in her 3 months.

4th. Were you employed on board of said schooner "Ocean Spray" on the 4th day of March last?

Ans. I was.

5th. In what capacity?

Ans. Seaman.

6th. Where was said schooner on said 4th of March?

64 Ans. Off Mendocino. We were off Noyo.

7th. Where is Noyo?

Answer. About eleven miles to northward of Mendocino.

8th. Where was the "Ocean Spray" bound to?

Ans. Bound for Little River.

9th. How far is Little River Harbor from Mendocino Harbor?

Ans. About 3½ miles, as near as I can say.

10th. Did you see the schooner L. C. Lane on the fourth day of March last; and, if so, where did you first see her?

Answer. I should say about ten miles off Mendocino.

11th. How far was she from the "Ocean Spray" at the time you first saw her?

Ans. About five miles.

12th. About what hour in the day was it when you first saw her?

65 Ans. About 11 o'clock a. m.

13th. Was it clear or cloudy?

Ans. Clear.

14th. How far, in your judgement, could vessels see each other at the time you speak of?

Ans. About 15 miles.

15th. What was the course of the wind at that time?

Ans. Nor'west.

16th. Please to look at this map, marked Exhibit A, to dep. of Thompson, and state if you drew it; and, if so, if it is a correct delineation of the coast represented on it.

Ans. I drew it. I think it is a correct delineation.

17th. Is the course of the schooner "Ocean Spray" and L. C. Lane, as laid down on exhibit marked "A," correct?

Ans. Yes, sir; I think it is.

18th quest. After you first saw the Lane, as you already

66 stated, did you lose sight of her until the collision took place?

Ans. No; I did not.

19th. How long should you say was it, after you first saw the Lane, before the vessels collided?

Ans. I can't tell the exact time; two hours, or two and one-half.

20th. You have represented upon Exhibit "A" the vessels as running down the coast with a free wind. Is said exhibit correct in that particular?

Ans. Yes, sir.

21st. You have also represented upon said exhibit the Lane as changing her course, and going outside of the Spray; in other words, crossing the Spray's track. Is that correct?

Ans. Yes, sir.

Quest. 22d. At what distance were you from the Lane when she crossed your track, as near as you can judge?

Ans. Three miles, or three and a half.

67 23d. What was the condition of her sails (the Lane's sails) before she attempted to cross the track of the Spray?

Ans. Foresail and jib.

24th. Had she no other sails but the foresail and jib on while she was running down the coast?

Ans. She was lowering the mainsail down.

25th. At what point did he commence lowering his mainsail down?

Ans. I don't the exact name of the point; it was the south point of Mendocino Harbor.

26th. Did he lower his mainsail down until he changed his course in order to cross the track of the Spray?

Ans. No; he didn't get it down until just before he crossed it.

27th. How far outside of the track of your vessel did he go after he crossed your track?

Ans. About a mile, or a mile and one-half.

68 28th. State what sails the Lane had on after she had crossed your track and got a mile and a half outside of you, as you have stated?

Ans. She wore round under foresail and jib, and lowered the foresail down; when she was about a mile or a mile and a half outside of the Ocean Spray, she wore around under foresail and jib, and lowered the foresail down.

29th. What course was she on at that time?

Ans. Heading down the coast.

30th. Had she a free wind at the time?

Ans. She had.

31st. At what distance were the vessels apart at that time?

Ans. About a mile or a mile and a half.

32d. What did the Lane do after that?

Ans. She commenced to hoist her mainsail up with the peak down.

69 33d. Did she change her course, and, if so, how soon after?

Ans. About three or four minutes.

34th. At what rate was the Spray going at that time?

Ans. About ten knots.

35th. About what rate should you say the Lane was going at that time?

Answer. About two miles.

36th. You have stated she changed her course; how did she change it?

Ans. She changed it heading in for Little River Harbor.

37th. Were both vessels running before the wind before the Lane changed her course as above stated?

Ans. Both had the wind free.

38th. Had the Lane to get into Little River Harbor to recross the track of the Spray?

Ans. I don't know as she had.

70 39th. How could she get in there without crossing your track?

Ans. There ain't room for two to go in at once.

40th. How long was it after the Lanee changed her course to go into Little River Harbor before the vessels collided?

Ans. I don't know the exact time; about four or five minutes.

41st. State now how the vessels collided, and everything in reference to the manner they were brought together.

Ans. He hoisted the peak of his mainsail up and luffed up on the wind, and on a sea taking us on the quarter, and slewed us into him. We had the wheel down when the sea took us.

42d. Could the Spray in any way have prevented the collision after the Lane changed her course to go into Little River Harbor.

Ans. No; she could not.

71 43d. Would the collision have occured had it not been for the Lane's changing her course as above stated?

Answer. We couldn't do anything towards it, as the sea took us and slewed us into her.

Question No. 43 repeated.

Ans. No; it would not.

44th. You then state that the cause of the collision was occasioned by the Lane's changing her course and attempting to go into Little River Harbor ahead of you?

Answer. I couldn't state that.

45th. Could the Lane have prevented the collision?

(Question objected to as leading, the witness having stated all he knows about it in the four previous answers.)

Ans. She could have prevented it if she had not changed her course.

46th. How long have you been employed as a seaman on this coast, and are you familiar with the navigation of vessels in entering and leaving the various harbors along said coast?

72 Ans. Four years next September; I have not been into all the harbors; I have been into some.

47th. Had the persons in charge of the Ocean Spray, from the manner and conduct of those in charge of the Lane, a right to suppose that the Lane intended to go into Little River Harbor until she hoisted her peak and changed her course?

(Objected to as improper and leading.)

Ans. No; they had not.

48th. You have described upon Exhibit "A" the place where the May Queen" was anchored at the time of the collision; is that correct?

Ans. Pretty nigh it.

49th. State if any person from the deck of the May Queen could have seen either vessel before or about the time they collided.

Ans. They might have seen us just before we got into her.

50th. Why could they not see?

Ans. Because she was lying too far up in the bight of the harbor.

73 51st. What is there, if anything, to obscure the vision in seeing vessels coming in from the north?

Answer. High land, from 40 to 50 feet high.

52d. What could a person see standing on the bridge as represented on this chart?

Ans. Could see the collision and the vessels as soon as they came around the point.

53d. What do those two dots represent upon this chart in Little River Harbor?

Ans. Rocks.

Cross-examination:

54th. I understand you to say, when you first saw the Lane, the Spray was opposite Noyo, and the Lane opposite Mendocino; is that correct?

Ans. Pretty nigh correct.

55th. Did you see the flag at half-mast on Mendocino Bluffs?

Ans. Yes.

74 56th. For what was that signal made?

Ans. It was made to warn vessels not to come in.

57th. When you first saw the Lane, for what port was she heading, if any?

Ans. For Mendocino.

58th. When did she change her course?

Ans. When she saw the flag half-mast.

59th. What course did she then take?

Ans. Down the coast.

60th. At the time she changed her course down the coast, the Spray was about opposite Noyo; is this correct?

Answer. It is not correct; the Spray was between Noyo and Mendocino, heading for Mendocino.

61st. How far from Mendocino was the Spray at that time?

Answer. About 5 or 6 miles to the south'ard and west'ard of Mendocino.

75 62d. At that time, how far inside of you was the Lane, and at what direction from you?

Answer. About 5 miles to the north'ard and eastward of us.

63d. Did the Lane pursue her course down the coast without changing it until she got to Little River Harbor?

Ans. She kept her course until she got opposite Little River Harbor, or pretty nigh opposite, and to the windward of it.

64th. When she got there, what did she do?

Ans. She hauled off shore.

65th. When she commenced to haul off shore, where was the Spray?

Answer. She was on a line very nigh off the southernmost point of Mendocino Harbor.

66th. Had you ever been into Little River Harbor before in any vessel?

Ans. No.

67th. When the collision occured, was the Lane on the wind inside
76 of the channel to Little River Harbor?

Answer. She was just in the mouth of the channel on the wind. She had just hauled on the wind.

68th. How did the Spray have the wind at that time?

Ans. We were coming down before the wind; when we got so we could just luff up, we ran into her; couldn't keep off on account of her being to the leeward of us, crowding us up on the reef, and a sea took us at the same time.

69th. When the Lane changed her course at Mendocino Harbor, did she jibe?

Ans. She did.

70th. How long, after she jibed, was it you saw her commence to lower the mainsail?

Answer. I can't tell exactly the time. It was a few minutes. It was a little south of the southward point of Mendocino Harbor.

71st. Did they continue to lower it until they got opposite to Little River Harbor?

Ans. They continued to lower it until they got pretty nigh
77 opposite to that harbor.

72d. Then, as I understand you, from a point a little to the north'ard and to the windward of Little River Harbor, they stood out under the foresail and jib about a mile or a mile and a half. Is this correct?

Answer. Yes, that is correct.

73d. Then they wore around and lowered the foresail at the same time, heading down the coast. Is this correct?

Ans. Yes.

74th. Then a minute or two after they lowered the foresail they commenced to hoist the mainsail. Is this correct?

Answer. Yes.

75th. Then when they commenced to hoist the mainsail up, they headed into Little River Harbor. Is this correct?

Ans. It is.

76th. How long was the time between their heading into Little River harbor and the collision?

78 Ans. Couldn't say the exact time; 5 or 6 minutes I suppose.

77th. When she first headed into Little River Harbor, how did the Lane have the wind? I mean before she luffed up into the channel.

Answer. Pretty nigh abeam.

78th. How far off was the Spray from the Lane, when the Lane commenced to head for Little River Harbor?

Answer. About a mile and one-half.

79th. The two vessels met, as I understand then, just at the mouth of the channel to Little River Harbor?

Ans. Yes.

80th. On which side of the Spray was the reef you have spoken of?

Answer. On the port side as the Spray, headed down the coast.

81st. Point out on Exhibit "A" the place the Spray was when
79 the Lane headed in towards Little River Harbor.

Answer. She was off the coast, to the northward of the northernmost point of Little River Harbor.

82d. How long before the sea took the Spray was it that you put the wheel down?

Answer. 2 or 3 seconds.

83d. How close to the high rocks, on her port side, did the Spray keep before, and how near to them was she at, the time of the collision?

Ans. We were not close to the bluffs, but we were close to the reefs; can't say how far from it; that is the way it looked to me. We were as close as we could be with safety; we got in there, anyhow.

PETER THOMPSON.

Sworn to and subscribed before me this 26th May, 1868.

S. NEALL, *U. S. Com'r.*

80 *Deposition of Ch's Scott.*

JUNE 19TH, 1868.

Quest. 1st. What is your name, age, and occupation?

Ans. My name is Charles Scott; 36 years of age; occupation, shipmaster; I have been shipmaster about 12 years.

2d. What vessel are you now in command of?

Ans. Laura May; I am part owner of her.

3d. What vessel were you in command of on the 4th March last?

Answer. Ellen Delia.

4th. Where were you with the Ellen Adelia on 4th March last?

Answer. We were lying at anchor in the Little River Harbor.

5th. State if you saw the collision that took place on that day, between the schooner L. C. Lane and the schooner Ocean Spray; if so, please state all you saw in connection with said collision.

81 Answer. I saw the collision; I first saw the masts of a schooner off the hills; I saw just the masts. This was over the north head; I thought it was the Ocean Spray; as she came within ¼ or ½ mile to the north'ard of the reef I saw it was the Lane; then she lowered down her mainsail; she stood off shore under foresail and jib; after a while he lowered his foresail down, and wore around under his jib; the same time I saw the masthead of the Ocean Spray over the hills. As soon as the Lane got wared round, she commenced hoisting her mainsail. The Ocean Spray came down the coast, and the Lane standing in from off shore, and they met on the north reef; if the Ocean Spray hadn't struck a breaker, probably the Lane would have gone ahead of her; a breaker struck the Spray, and threw her into the Lane.

6th. Where were you standing during the time you saw the vessels, as above stated?

Ans. I was standing aft, on the deck of my own vessel.

7th. Have you frequently visited Little River Harbor, and are you familiar with the manner of entering it?

82 Ans. Yes, sir; have been going their over three years steady.

8th. How long a time should you think elapsed after the Lane lowered her mainsail before she lowered her foresail?

Answer. 15 or 20 minutes, I should think; might be a little more or less.

9th. How long should you think it was after the Lane's foresail was lowered before she luffed?

Answer. I don't know; couldn't be very long; might be 5 minutes or so; might be more; might be less. She hoisted her mainsail as soon as she wore around.

10th. How long should you think it was, after he hoisted his mainsail, before he hoisted his peak?

Answer. I don't think the peak was quite up when they struck together.

11th. How long should you say it was after the Lane lowered her foresail before the collision took place?

Answer. I can't say exactly.

83 12th. Was the Lane outside of the Spray when she commenced wearing around?

Ans. Yes, she was outside; the Spray came down the shore.

13th. I would ask you now, as a nautical man, state, if you please, what the lowering of the mainsail and foresail of the Lane would indicate as to her intention to come into the harbor of Little River.

Ans. Generally, when it blows hard, if we don't come in we generally reef the mainsail, and stand off shore.

14th. Was it blowing hard at the time, and was there a heavy sea on?

Ans. Yes; it was blowing pretty hard from the northwest, and pretty heavy sea on.

15th. When you saw the Lane lowering her mainsail, and standing out from the shore, did you have any conversation with your mate about the matter; and, if so, what was it?

Ans. I told the mate, I guess the vessel ain't coming in here, be-

84 cause there were two vessels already in the harbor.

16th. Why did you make this remark to your mate; was it not from the fact that the Lane was lowering her mainsail and standing off shore?

Answer. Well, he was standing off, and I thought he wouldn't come in.

17th. Had you been the master of the Spray, would you not have supposed, from the course pursued by the Lane, that she did not intend to enter the harbor?

Ans. Well, I would thought at the time he stood off shore he wouldn't come in.

18th. State whether the Lane, in changing her course, and standing off shore, and passing outside of the Spray, would not lose her right to enter the harbor before the Spray.

(Objected to as immaterial and incompetent.)

Ans. A question like that I hardly can answer; sometimes I stand out myself, to see who is in the harbor, and wear around and come in. I can't say which would have the right; I don't know anything about that.

85 19th. Please to look at the map marked Exhibit "A" to Thompson's deposition, and state if the Lane, as described on said map, is in the position as you saw her before the collision.

Ans. The position of the Lane on the map, the first time she headed out, is correct; but the position after she got out is not correct in this: she was further out to the north'ard than indicated on the map.

20th. You have stated that a breaker struck the "Spray," and threw

her into the "Lane." Could the Spray have avoided the collision, in your judgement, after the Lane wore around, and attempted to cross the track of the Spray and enter the harbor?

Ans. Could not when the breaker struck her.

21st. What distance, in your judgement, was the Spray from the Lane when she wore around as you have stated?

Ans. Well, I couldn't tell; at that time I had not seen the Spray over the hills. A short time after I saw the Spray's masthead over the hills.

86 22d. How soon did the vessels collide after the Lane wore around?

Ans. Might be about ten minutes, more or less; can't tell exactly.

Cross-examination:

The wind blew pretty hard that day, about twelve knots; I think more than a twelve-knot breeze. The wind was northwest. It was not clear weather, kind of cloudy. Believe I could see a vessel fast enough 4 or 5 miles off. The usual course of vessels coming into Little River Harbor is to steer northeast when they get inside of the reef; but, coming down from the northward in such weather, they give the reef more berth than when it is fine weather; I mean the northward reef of rocks. The distance from the northward to the southward reef of rocks, at the entrance to Little River Harbor, is about three hundred feet, more or less.

Quest. Please mark in red ink upon the map Exhibit "A," attached to deposition of Thompson, the position of the Spray and the Lane, and the direction in which they headed at the time you first saw the Spray.

87 (Here witness marks on Exhibit "A" as the

S.

schooner "Spray," and says she was heading in this direction, and on this line; but might have been a little further in or out.

Here witness marks as the schooner Lane.)

L.

Quest. Please put upon the map in red ink the relative positions of the Spray and the Lane at the time of, or just immediately before, the collision.

(Here the witness marks on the map in red ink the position of the respective vessels at the time of the collision, the "Spray" being marked

"S," and the "Lane" "L," as follows: and says that the

positions are correct to the best of his knowledge, but is not positive; but thinks the vessels were further inside the channel than represented on the map.)

Quest. What part of the Spray struck the Lane?

Ans. The Spray came on to the Lane bow first, striking the Lane's main port rigging.

Quest. On which side of the northerly reef did the Spray take the breaker you have spoken of?

Ans. On the outside, to the north of the reefs.

88 Quest. In your opinion, did the breakers carry the Spray over the reef?

Ans. That I couldn't teil sure; I thought so. He was very close to the reef when he went over.

Quest. Did the Spray come in closer than vessels usually do in entering the harbor in such weather?

Ans. She came in a little closer this time than they generally do.

Quest. Did you not in Little River Harbor; just after the collision, hear Captain Kentfield, of the "Ocean Spray," say, publicly and openly, that he thought the vessel ahead of him was the "Ellen Delia," and that he wanted to get into the harbor ahead of her?

Ans. I heard him say that he thought it was the Ellen Delia; but I didn't hear him say that he wanted to get in ahead of her.

Quest. What difference does it make as to detention which schooner gets into the harbor first?

Ans. Winter times makes a good deal of difference; sometimes three weeks, sometimes only a couple of days' difference. The first

89 vessel that gets in loads first; the others have to wait till she is loaded. They can only load one vessel at a time.

Quest. How long was it from the time the Lane headed into the harbor to the time of collision?

Ans. Maybe ten or fifteen minutes, more or less.

Quest. Did you know, at the time she wore around and headed towards the harbor, that she was coming in?

Ans. I couldn't tell whether she was coming into Little River Harbor or going to the Albion. I could tell when she got closer in.

Quest. At the time you first saw the Spray was the Lane near enough in for you to judge she was coming into the harbor?

Ans. Yes; after that I could tell the Lane was coming in there.

Quest. At the time you first saw the Spray how far to the northwest of the northwardly reef was she?

Ans. She was about half a mile, something like that.

Quest. Do not vessels, in entering Little River Harbor, gener-

90 ally stand off from the entrance to see what vessels are in?

Ans. Some do and some don't.

Quest. At what time did the Ellen Delia leave San Francisco, and for what place was she bound? Did she leave before or after the Spray?

Answer. I believe it was a day or two after; bound to Little River. The Spray left a day or two before us, both bound to the same place.

Quest. I understood you to say that, in regard to those of the positions of the vessels that you saw, the map Exhibit "A" is not correct; is it so?

Ans. It is pretty near right; there is a little difference; at the time of the collision I think they were further in.

Quest. Did you not think when you saw the Spray coming over the reef that she would ground?

Ans. I thought she was close to the reef, and would strike; she might have been far enough off; never can tell exactly.

Quest. What sail did the Spray have in, and how did she have

91 the wind from the time you saw her to the time of collision?

Ans. I think she had mainsail and foresail close-reefed and full jib. She had wind free.

Quest. At the time you saw the Spray, and from that time up to the time of the collision, what sail did the Lane have on, and how did she have the wind?

Ans. She had a whole jib on and a reef in the mainsail, I believe; she was not quite hauled on the wind. At the moment of collision the Lane had the wind a couple of points free.

Quest. At the time of the collision how far off the starboard beam of the Lane was the southerly ledge of rocks marked on the map?

Ans. That I couldn't tell; never looked after that. She was very near the middle of the channel; can't say exactly; didn't take any notice of it.

C. SCOTT.

Sworn and subscribed to before me this 19th June, 1868.

H. F. LARDNER, *U. S. Com'r.*

Endorsed: Filed August 20, 1868.

GEO. E. WHITNEY, *Clerk.*
By S. NEALL, *Dep'y.*

92

93 *Stipulation to take testimony.*

In the district court of the United States for the district of California.

N. C. ERLANDSEN ET AL.
vs.
THE SHIP "OCEAN SPRAY," &c.

It is hereby stipulated, consented, and agreed, by and between the respective parties to the above-entitled cause, that the deposition and testimony of Peter Peterson and Henry Brown, witnesses on the part of the libellants in said cause, to be taken before United States Commissione George E. Whitney, at his office, Merchants' Exchange, Battery street, on Saturday the 4th day of May, 1868, at 11 o'clock a. m., and continuing from time to time thereafter until compleated; and that said deposition and testimony, when taken, be read and used in evidence in said cause on any trial thereof or proceeding therein, subject to the same objections and exceptions as if said witnesses were personally present on the stand, but without objection or exception to the time, place, and manner of taking the same.

H. & C. McALLISTER,
Proctor for Libellant.
J. B. MANCHESTER,
Proctor for Respondent.

94 *Deposition of Peter Peterson.*

District court of the United States for the district of California.

N. C. ERLANDSEN & AL.
vs.
SCH'R OCEAN SPRAY & AL.

Be it remembered that on this fifth day of May, A. D. 1868, at my

office in the United States court building, in the city of San Francisco, personally appeared before me , a commissioner to take acknowledgement of bail and affidavits, etc., duly appointed by the circuit court of the United States for the district of California, Peter Peterson, a witness on behalf of the libellants in the above-entitled suit.

C. McAllister, esq., appeared as proctor for the libellants, and J. B. Manchester, esq., as proctor for the claimants.

And the said witness having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by proctor for libellants:

95 Quest. What is your name, age, occupation, and place of residence?

Ans. My name is Peter Peterson; my age, 34 years and upwards; my occupation is seafaring; and my place of residence, San Francisco.

Quest. Have you ever been to Little River Harbor, in Mendocino County; if so, how many times?

Ans. Have been there several times; can't state how many, because a great many times.

Quest. Were you there during the early part of March, 1868; if so, in what capacity were you there?

Ans. We came in the May Queen in the morning of the 4th March; was mate of her. I know the schooner "L. C. Lane;" first saw her before dinner; I was on the deck of the May Queen at Little River Harbor; the wind was about northwest at that time; the Lane was steering in for the harbor. When I first saw the Lane she was not in the channel, out 1½ miles off shore. When I first saw her (the Lane) the wind was northwest about; she had hauled up on the wind, and was steering for the harbor.

Quest. Did you see the "Ocean Spray" at that time?

96 Ans. No; I did not.

Quest. How long after you saw the Lane did you see the Ocean Spray, and where was the Ocean Spray when you first saw her?

Ans. I can't state exactly how long after I first saw her; she was coming down off the land when I first saw her.

Quest. In what direction was she from the Lane?

Ans. To the windward of her.

Quest. How far?

Ans. About half a mile.

Quest. When you first saw her how did the Spray have the wind?

Ans. She was before the wind.

Quest. Look at this map, and say if it is generally correct, of Little River Harbor.

(Marked Exhibit 1.)

Ans. Yes; it is generally correct.

97 Quest. When you first saw the Spray, how was the Lane heading and how did she have the wind?

Answer. She was outside of the outer rock, heading in for the harbor. She had the wind northwest. The Lane was heading right in for the harbor.

Quest. From your position, at that time, did you have a full view of the entrance of the harbor?

Ans. I had.

Quest. Did the Spray, in coming into the harbor, follow in the wake of the Lane?

(Quest. objected to as leading.)

Ans. She did not; she was to the windward of the Lane.

Quest. In entering the harbor, which of the vessels followed the course usually taken by vessels in entering?

Ans. The Lane.

Quest. State particularly the course usually followed by vessels in entering the harbor from the northward, or north and westward.

98 Ans. The outside rocks on the outside ledge are sunken rocks. Vessels coming into the harbor from the northward or north and west, give the sunken rocks a good offing and then haul in their sheets, heading straight into the harbor. This was the course pursued by the "Lane."

Quest. What was the course pursued by the "Spray" in entering the harbor?

Ans. I saw her first coming down before the wind, steering about E. S. E., I suppose. She [she] hauled in for Little River Harbor.

Quest. How did she run as to the outer ledge of rocks?

Ans. She came close by land or the rocks, and either went over or just on the edge of the sunken rock.

Quest. How long after she went over the sunken rock did she collide with the Lane?

Ans. Only a few seconds.

Quest. At that time, how far to the leeward of the Lane was the inner ledge of rocks?

99 Ans. About a quarter of a cable's length.

Quest. At that time, could the Lane have payed off to the leeward?

Ans. No, sir.

Quest. State how the collision occured, and what you saw.

Answer. The "Spray," with her bow, struck the Lane in the main rigging, carried away the main halliards of the Lane, and her mainsail came down, and then they lost the command of the ship on the "Lane." Then the Lane got on the reefs in Little River Harbor, and the "Spray" came in and anchored at the harbor. I went the same day to see the Lane as she lay on the rocks. We tried to get her off; got anchors and lines out, and tried to heave her off. The weather got rough, the chain part, the line parted, and she went in over the reef; she is now on the beach in Little River.

Quest. What caused the collision, and what caused the Lane to go ashore on the reefs?

100 Ans. I think the Spray ran into the Lane, because the "Spray" got in too close to the sunken rocks, and the Lane went ashore, because the Spray ran into her.

Cross-examination:

Quest. I understand you to say that when you first saw the Spray you should judge she was about ½ mile from the Lane; please state the relative position of both vessels at the time.

Ans. The Lane was in the channel, going into the harbor, and the Ocean Spray was coming along the land, also running in for the harbor.

Quest. Which vessel was outside at that time?

Ans. None that I know of; that is more than I can answer.

Quest. Where was your vessel, the "May Queen," at that time—at the time you first saw the Spray?

Ans. At the moorings at Little River.

Quest. Who was master of the "May Queen?"

Ans. Captain Brown.

101 Quest. What time elapsed after you first saw the Spray before the vessels collided?

Ans. Can't exactly answer.

Quest. You say that, in your opinion, the Spray ran into the Lane; why do you say that when you now state that you can't tell the relative position of the vessels at the time, or which was outside?

(Objection on the ground that it assumes that the witness has stated that he could not tell the relative position of the vessels, whereas in answer to question witness has stated the relative position of the vessels—that the Lane was in channel going into harbor, and the Spray running along the land.)

Ans. I was not on board. I was merely a looker-on.

Quest. How far was your vessel from the Lane and Spray when they collided?

Ans. I can't judge.

Quest. Have you no idea of the distance?

Ans. Yes; about ¼ mile.

P. PETERSON.

Sworn and subscribed this 5th May, 1868.

S. NEALL.

102 *Deposition of Henry Brown.*

Henry Brown sworn:

My name is Henry Brown; 25 years; seaman; live in Mendocino County.

Quest. 1. State where were you on the 4th March last; if you saw the collision between the "Lane" and "Spray," when you first saw the "Lane," and how was she heading. State particularly all you know about it.

Ans. On the 4th March last, in Little River, standing on the bridge. I had a view of the channel and harbor both; don't remember if before or after dinner; I saw the Lane first; she was steering for the harbor; she was heading for the harbor; she had the wind about northwest; she was on the wind; she had her port tacks aboard; she was right abreast of outer ledge of rocks; a few minutes after I saw the "Lane" first, I saw the "Spray;" the Spray was coming before the wind; can't say what course she steered before she struck the Lane.

Quest. 2. Did the Spray take the course usually taken by vessels in entering Little River Harbor, and, if not, in what did her course differ from it?

103 (Objection, 1st, as leading; 2d, no foundation has been laid as to the witnesses' knowledge as to the course vessels should take in coming into harbor.)

Ans. No, she did not; because she was right in the breakers where we see the rocks at low water.

Quest. 3. How long have you lived at Little River, and what is your employment, and do you know the course usually pursued by vessels in coming in.

Ans. Nineteen months about. I am a tally man on the point to tally the lumber that usually goes on board of vessels. I do not know the course by the compass, but I do by the land, and I know the channel.

Quest. 4. State course pursued by vessels in coming in from northward or northward and westward, and if the Lane pursued that course.

Ans. The Lane pursued the course generally pursued by vessels coming in; vessels generally come down and give the sunken rocks on the outside ledge an offing, and then haul up heading for the channel.

Quest. 5. Look at Exhibit No. 1, and state if it is generally
104 a correct delineation of Little River Harbor.

Ans. Yes, it is.

Quest. 6. When the collision occured, how far to the leeward of the Lane was the inner ledge of rocks?

Ans. Can't state the distance; it was close.

Cross-examination:

Quest. 7. How far were the vessels apart when you first saw them?

Ans. A very short distance.

Quest. 8. Were they both running before the wind at the time?

Ans. No; one was on the wind, and the other free.

Quest. 9. Which was free and which on the wind?

Ans. Ocean Spray was free and the Lane on the wind.

Quest. 10. Which was outside when you first saw them both?
105 Ans. I did not measure the distance.

Quest. 11. Which vessel was farthest from the land when you first saw them?

Ans. Which land?

Quest. 11 repeated.

Ans. I want to know which point you mean?

Quest. 13. Who brought you down as a witness?

Ans. I came down on my own business.

Quest. 14. What amount was promised you, or did you get, from Capt. Elerdson, or any one else, for coming down here as a witness?

Ans. Nothing from anybody.

Quest. 15. Were the vessels half a mile apart when you first saw them?

Ans. No; but a very short distance.

Quest. 16. What was you doing when you first saw them?

Ans. I was standing on the bridge doing nothing.

106 Quest. 17. How long after you first saw both vessels was it before they collided?

Ans. I can't tell particular the minutes.

HENRY BROWN.

Sworn and subscribed this 5 May, 1868.

S. NEALL, *U. S. Com'r.*

107 In the district court of the United States for the district of California.

N. C. ERLANDSON ET AL.
vs.
SCHOONER OCEAN SPRAY, &c.

UNITED STATES OF AMERICA,
District of California, County of Mendocino, ss:

N. C. Erlandson, being duly sworn, says that he is one of the libellants in the above-entitled cause; that Jerome B. Ford, J. E. Carlson, Truman Smith, Charles Smith, James Holman, Alexander Cameron, John Smith, Fred. Golgert, Ruel Stickney, Richard Coombs, Silas

Coombs, Henry Beard, A. F. Malmann, ———Hinkley, W. H. Dunn, Thomas Brown, are material and necessary witnesses for libellants upon the trial of the above-entitled cause; that said witnesses, and each of them, reside and live in the county of Mendocino, and more than one hundred miles from the place of the trial of the above-entitled action.

Deponent further says that both claimant and his proctor reside
108 and are in the city & county of San Francisco, and more than one hundred miles from the place where said depositions are to be taken.

And further says not.

N. C. ERLANDSON.

Sworn and subscribed to before me this 21st day of July, A. D. 1868.
WM. HEESER, *Notary Public.*

On said 21st day of July, A. D. 1868, proceeded to take the deposition of the afore-named witnesses as follows:

109 *Deposition of Alex. Cameron.*

STATE OF CALIFORNIA, *County of Mendocino, ss:*

Alexander Cameron, being duly sworn, deposes and says, in answer to the following interrogatories:

Ques. 1. State your name, age, place of residence, and occupation.

Ans. My name is Alexander Cameron; my age, thirty-seven; residence at present, Little River; lumberman.

Ques. 2. Have you been to Little River Harbor? If so, state the extent of your acquaintance with that place.

Ans. I have been here ever since the Lane came in here; am not acquainted with the harbor, only from looking off the land here only that time I came in here.

Ques. 3. Do you know the usual course of vessels coming from the northward or northwestward in entering Little River Harbor?

Ans. No, sir; I do not.

Ques. 4. Do you know the schooner "L. C. Lane" and Ocean Spray?

110 Ans. Yes, sir; I did know them; seen them both.

Ques. 5. Were you at or near Little River Harbor on the fourth day of March, A. D. 1868? If yea state where you were on that day, and if you had a full view of the entrance to Little River Harbor.

Ans. I came to Little River Harbor that day; was a passenger on the Lane, and had as good a view of Little River Harbor as a person could have.

Ques. 6. State at what time during that day (if at all) you first saw the schooner "L. C. Lane" and Ocean Spray.

Ans. The L. C. Lane I was a passenger aboard of; could not exactly tell what time I first seen the Ocean Spray; saw her by midday anyhow, I think.

Ques. 7. Which of said schooners did you see first, and where was she when you first saw her?

Ans. I seen the Lane first, because I was in her all the time.

Ques. 8. If you say you saw the schooner "Lane" first on that
111 day, state where the "Spray" was at that time, and how long after, and where did you first see the "Spray."

Ans. Saw what proved to be the "Spray" away to the northwest of us. Could not see anything but her sails.

Ques. 9. Which of said schooners, the "Lane" or the "Spray," arrived first off the northerly reef at the entrance to Little River Harbor?

Ans. The Lane arrived first.

Ques. 10. If you say that the "Lane" arrived off the reef referred to first, state where was the Spray at that time.

Ans. Well, she was coming down from Big River, coming down the coast to come in here too.

Ques. 11. When the "Lane" arrived off the reef, what course did she take? State particularly.

Ans. She took a course into the harbor, right straight in.

Ques. 12. If you say that the "Lane" headed into the channel of Little River Harbor, state where the "Spray" was at that time. How
112 long before the collision was this, and how did each of the vessels have the wind from that time to the moment of collision?

Ans. The Spray was to the northward or northwest of us; it was some little time, not a great many minutes, before the collision; the "Spray" had the wind about full; we were on the wind.

Ques. 13. If you say you know the usual course pursued by vessels in entering Little River Harbor, state whether the "Lane" or the "Spray" pursued that course.

Ans. I do not know the course, but it is so plain, I should think there was only one course to pursue; the "Lane" was in the usual channel, I should say.

Quest. 14. State if you saw where the "Spray" crossed the northerly edge of rocks at the entrance to the harbor, and whether that is the usual place for vessels to cross the edge.

Ans. I do not know anything about the usual way where they cross them.

Ques. 15. State whether or not the "Spray" attempted to cut across the ledge of rocks, and what was the consequence.

113 Ans. I think she attempted to cut across the ledge of rocks, and the consequence was she run into the "Lane."

Ques. 16. If you saw the collision, state how the same occured, how each vessel was sailing at the time, and how and where they struck each other.

Ans. The "Lane" was on the wind coming into the harbor, and the "Spray" had the wind fair, and she struck the "Lane" about the main shrouds; the "Spray" struck right stem on.

Ques. 17th. State the effect of the collision on the "Lane." What became of her afterwards and what efforts, if any, were made to save her? State particularly.

Ans. The effect was the cut away all her shrouds, except, I believe, one, that was left standing, and burst a hole into her side; she afterwards drifted on to a rock, the sea then washed her off that, and they tried to keep her off as much as they could; the mainsail fell when she was struck, carried away the halyards; she would not obey the helm to beach her; the captain tried all his endeavours to beach her, to keep her off
114 the rocks; after she was off that rock she flowed again; they still tried to keep her up, but the wind and sea threw her on the rocks; when she filled and sank; she was no time after she got off that first rock till she sank and filled; don't think it was over ten minutes, might not have been so much, should not think it was over.

Ques. 18. Do you know George Kentfield, master and owner of said "Spray?" If yea, state if you heard him make any statement in regard to said collision, what said statement was, and where and when it was made.

Ans. I know him now to see him; I did not know him then; he met me on the road here one morning, between here and Big River; he said his schooner must have run 22 miles an hour; he never seen her run so fast, neither before nor since; that's all the remarks he made to me.

Ques. 19. Do you know of any other matter or thing in regard to said collision? If yea, state the same as fully as if you were particularly interrogated in regard to the same.

Ans. Do not know of any other matter regarding the collision.

115 Quest. 20. How long time elapsed from the time the "Lane" wore round, heading in for Little River Harbor, until the collision occured?

Ans. Cannot tell exactly; should think it was about 15 to 20 minutes.

Ques. 21. Did it look to you as if the "Spray" wanted to head off the "Lane," and get in before her into the harbor?

Ans. Yes, sir; so much so, I said to some person, before she struck, she is going to strike it.

Ques. 22. How far is it between the south and the northern reefs at the mouth of Little River Harbor?

Ans. I could not tell how far it was; know the distance is short.

Ques. 23. Whereabouts did the collision occur?

Ans. It occured about or at the mouth of Little River Harbor.

116 A map or painting intended to represent Big River and Little River Harbors and the environs, and the relative positions of the "Ocean Spray" and L. C. Lane at different periods, shortly before, at, and after the collision, was then shown the witness, and in answer to the question whether the relative positions of the two named vessels at different times of the day of collision was given correctly thereon, he answered, "Yes, I think that is a correct picture."

ALEXANDER CAMERON.

Sworn and subscribed to before me this 21st day of July, A. D. 1868.

WM. HEESER, *Notary Public.*

117 *Deposition of Fred. Golgert.*

STATE OF CALIFORNIA, *County of Mendocino, ss:*

Fred. Golgert, being duly sworn, deposes and says, in answer to the same interrogatories asked the first witness, Alexander Cameron, and in his testimony fully written out:

Ans. 1. My name is Fred. Golgert; am twenty; Little River; saw-mill man.

Ans. 2. Yes; I have been to Little River Harbor; gone out and come in there a good many times during the last three years that I have resided here.

Ans. 3. I do not know exactly the usual course of vessels coming from the northward or northwestward in entering Little River Harbor.

Ans. 4. Yes; know the schooner L. C. Lane and Ocean Spray.

Ans. 5. Yes, sir; was right out on the point looking at the vessels; yes; had a full view to the entrance of Little River Harbor, on the fourth of March, 1868.

Ans. 6. I think it was about half past one or two o'clock that I first saw the "L. C. Lane" and "Ocean Spray."

118 Ans. 7. I was out on the point and seen the Lane before she got on to the rocks, and the second time I looked I seen the "Ocean Spray" into her, and the Lane going on to the rocks.

Ques. 9. Which of said schooners, the "Lane" or the "Spray," arrived first off the northerly reef at the entrance to Little River Harbor?

Ans. The Lane arrived first.

Ques. 10. If you say that the "Lane" arrived off the reef referred to first, state where was the Spray at that time.

Ans. Well, she was coming down from Big River, coming down the coast to come in here too.

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112 long before the collision was this, and how did each of the vessels have the wind from that time to the moment of collision?

Ans. The Spray was to the northward or northwest of us; it was some little time, not a great many minutes, before the collision; the "Spray" had the wind about full; we were on the wind.

Ques. 13. If you say you know the usual course pursued by vessels in entering Little River Harbor, state whether the "Lane" or the "Spray" pursued that course.

Ans. I do not know the course, but it is so plain, I should think there was only one course to pursue; the "Lane" was in the usual channel, I should say.

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Ans. Cannot tell exactly; should think it was about 15 to 20 minutes.

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A map or painting intended to represent Big River and Little

116 River Harbors and the environs, and the relative positions of the "Ocean Spray" and L. C. Lane at different periods, shortly before, at, and after the collision, was then shown the witness, and in answer to the question whether the relative positions of the two named vessels at different times of the day of collision was given correctly thereon, he answered, "Yes, I think that is a correct picture."

ALEXANDER CAMERON.

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WM. HEESER, *Notary Public.*

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STATE OF CALIFORNIA, *County of Mendocino, ss:*

Fred. Golgert, being duly sworn, deposes and says, in answer to the same interrogatories asked the first witness, Alexander Cameron, and in his testimony fully written out:

Ans. 1. My name is Fred. Golgert; am twenty; Little River; saw-mill man.

Ans. 2. Yes; I have been to Little River Harbor; gone out and come in there a good many times during the last three years that I have resided here.

Ans. 3. I do not know exactly the usual course of vessels coming from the northward or northwestward in entering Little River Harbor.

Ans. 4. Yes; know the schooner L. C. Lane and Ocean Spray.

Ans. 5. Yes, sir; was right out on the point looking at the vessels; yes; had a full view to the entrance of Little River Harbor, on the fourth of March, 1868.

Ans. 6. I think it was about half past one or two o'clock that I first saw the "L. C. Lane" and "Ocean Spray."

118 Ans. 7. I was out on the point and seen the Lane before she got on to the rocks, and the second time I looked I seen the "Ocean Spray" into her, and the Lane going on to the rocks.

Ans 8. I first seen the Lane coming into the harbor, and after five minutes' time the Ocean Spray was into her.

Ans. 9. The Lane arrived first off the northerly reefs at the entrance to Little River Harbor.

Ans. 10. The Spray was about 200 or 300 yards off the outside rock.

Ans. 11. When the Lane arrived off the reef she headed for the harbor of Little River.

Ans. 12. The Spray was coming around the northwest rock; was about, not very long, about 8 or ten minutes before the collision; the Lane had the wind by the wind, or on the wind, [or on the wind,] and the Spray had the wind about two points free.

Ans. 13. Of the two vessels, the Lane pursued the usual course in entering Little River Harbor.

119 Ans. 14. I do not know where the Spray crossed the northerly edge of rocks at the entrance to the harbor; did not see her at the time. I was at the point and went back to the house, and saw her when she was outside, and before I got back to the point again the Spray was into the Lane.

Ans. 15. Do not know.

Ans. 16th. I did see the vessels together, but I did not see them striking.

Ans. 17. By the collision it cut the Lane right through to let the water in, so that she was sinking so long till she struck the beach. After the Lane was struck they tried the best to save her; she went on the inside reef, and could not get no further because she was on the bottom.

Ans. 18; Yes; know George Kentfield. Yes; heard him say in the store that he thought it was the schooner Ellen Odelia before he struck the Lane, and that he wanted to get in ahead of her; heard him say he would learn them how to get into port ahead; that's about he said.

120 Ans. 19. That time I see the Lane and Spray that looked to me that the Spray wanted to get in ahead of her.

Ques. 20. How wide is it across from the northwest to the south reef at the entrance to Little River Harbor?

Ans. 20. It is wide enough for two vessels to pass one another without touching each other.

A map or painting intending to represent Big River and Little River Harbor, and the environs, and the relative positions of Ocean Spray and L. C. Lane at different periods, shortly before, at, and after the collision, was then shown to the witness, and he was asked whether the relative positions of the two vessels at different times of the day of the collision, as far as they came under his observation, was correct, he answered, "Yes."

F. GOLGERT.

Sworn and subscribed to before me this 21st day of July, A. D. 1868.

WM. HEESER, *Notary Public.*

121 *Deposition of A. F. Mahlmann.*

STATE OF CALIFORNIA, *County of Mendocino, ss:*

A. F. Mahlmann, being duly sworn, deposes and says, in answer to the following interrogatories:

Ques. 1. State your name, age, place of residence, and occupation.

Ans. August Frederick Mahlman; forty-three years; Little River; hotel-keeper.

Ques. 2. Have you been to Little River Harbor? If so, state the extent of your acquaintance with that place.

Ans. Yes; all I know about the harbor is from looking at it standing on the bank; never went out of the harbor here.

Ques. 3. Do you know the usual course of vessels coming from the northwest or northwestward, in entering Little River Harbor?

Ans. No, sir.

Ques. 4. Do you know the schooners L. C. Lane and Ocean Spray?

Ans. Yes, sir.

122 Ques. 5. Were you at or near Little River Harbor on the fourth day of March, A. D. 1868? If yea, state where you were on that day, and if you had a full view of the entrance to Little River Harbor.

Ans. I was a part of the day here, in the forenoon and evening; left here at one o'clock p. m., and came home 4 p. m. I was not here when the collision occured between the Spray and the Lane.

Ques. 6. Do you know George Kentfield, master and owner of said "Spray?" If yea, state if you heard him make any statement in regard to said collision, what said statement was, and where and when it was made.

Ans. Yes, sir. George Kentfield said he did not know that it was the Lane; he thought it was the schooner Ellen Odelia, Capt. Scott; and tried to get ahead of her for to get the first chance to load; heard nothing more; heard him say that twice, two different times; that was between 5 and 6 o'clock in the evening of the day of the collision; the first time it was on the point between the lumber piles, and the second time

123 it was in Messrs. Stickney and Company's store; that is all I know about it.

A. F. MAHLMANN.

Sworn and subscribed to before me this 21st day of July, A. D. 1868.

WM. HEESER, *Notary Public.*

124

125 *Deposition of W. H. Dunn.*

STATE OF CALIFORNIA, *County of Mendocino, ss:*

William H. Dunn, being duly sworn, deposes and says, in answer to the interrogations, as follows:

Ques. 1. State your name, age, place of residence, and occupation.

Ans. William H. Dunn; twenty-five years old; Little River; house-joiner.

Ques. 2. Have you been to Little River Harbor? If so, state the extent of your acquaintance with that place.

Ans. Have been here since a year ago the 16th of April; have never been out in a boat in the harbor.

Ques. 3. Do you know the usual course of vessels coming from the northward or northwestward in entering Little River Harbor?

Ans. Yes; that is the course that they always do take; all the vessels that come here.

Ques. 4. Do you know the schooner L. C. Lane and Ocean Spray?

Ans. I know the Ocean Spray, and I did know the Lane before she gone up.

126 Ques. Were you at or near Little River Harbor on the fourth day of March, A. D. 1868? If yea, state where you were on that

day, and if you had a full view of the entrance to Little River Harbor?

Ans. Yes; I was right out in a shanty standing at the window; saw the two vessels when they just drawing apart from each other; the Ocean Spray's nose was in over the rail of the Lane; that is the first I see of them; I did not see the vessels before they collided.

Ques. 6. State the effect of the collision on the Lane.

Ans. I could not tell the damage that was done to her till she came near enough so that I could have a fair look at her; it was supposed though, by the looks of her, that she was sinking; when the vessel came in between the two big rocks in the harbor we could see some of the damage done to her; saw a hole in her about midships.

Ques. 7. What is the usual course pursued by vessels coming in to Little River Harbor?

127 Answer. It seems to me that they coming from San Francisco go up past the harbor, then come down with a northwest wind, which generally blows here in the summer during the daytime. When they come, they come around on a circle to get into the harbor; they are sailing easterly all the time they are circling from the mouth of the harbor coming in.

Ques. 8. In coming into the Little River Harbor is it customary to give the northwest reef rock a berth or not—a berth meaning a distance?

Ans. Yes; they have to give it a distance.

Ques. 9. From the position the vessels were in at the time you saw them first, which one of the two, the Lane or the Spray, seemed to you to have followed the usual course pursued by vessels in coming into the Little River Harbor?

Ans. The Lane.

Ques. 10. Do you know George Kentfield, master and owner of said Spray? If yea, state if you heard him make any statement in regard to said collision; what said statement was, and where and when it was made.

128 Ans. I know said George Kentfield; I heard him say that he supposed it was the Ellen Odelia, and that he was trying to get in ahead of her, to get in first; don't recollect any more what he said; recollect that much of his conversation. He said that in the store at Little River shortly after the collision.

Ques. 11. Whereabouts did the collision between the Ocean Spray and the Lane occur?

Ans. Right off the northwest point of Little River Harbor.

A map or painting intending to represent Big River and Little River Harbors and the environs, and the relative positions of the Ocean Spray and L. C. Lane, at different periods shortly before, at, and after the collision, was then shown the witness, and in answer to the question whether the relative positions of the two named vessels at different times of the day of collision was given correctly thereon, he answered: "I saw them from the time they were together until the Lane was ashore; the picture or map looks to me just the same as did on the harbor the day of the collision."

WILLIAM H. DUNN.

Sworn and subscribed to before me this 21st day of July, A. D. 1868.
WM. HEESER, *Notary Public.*

129 Whereupon adjourned for the 22nd day of July, 1868.
WM. HEESER, *N. P.*

On July 22nd, 1868, proceeded with taking depositions, as follows:

Deposition of John Smith.

STATE OF CALIFORNIA, *County of Mendocino, ss:*

John Smith, being duly sworn, deposes and says, in answer to the following interrogatories:

Ques. 1. State your name, age, place of residence, and occupation.

Ans. John Smith; nearly 25 years; Little River; has been going to sea till I come here; followed the sea since fifty-nine.

Ques. 2. Have you been to Little River Harbor? State the extent of your acquaintance with that place.

Ans. Yes, sir; I come acquainted with the harbor the time I came in on the Lane and was wrecked here; I went down in the Ocean Spray that time, from Little River Harbor, came back to Little River in the Ellen Odelia; been here since.

130 Ques. 3. Do you know the usual course of vessels, coming from the northward, in entering Little River Harbor?

Ans. Do not exactly know the course.

Ques. 4. Where were you on the fourth day of March, A. D. 1868?

Ans. Cannot tell the day exactly.

Ques. 5. About when was it that as you say you came in on the Lane and was wrecked here?

Ans. In March, 1868.

Ques. 6. What were you for on board of the L. C. Lane at the time?

Ans. Seaman.

Quest. 7. State when did you first see the schooner Ocean Spray on the day you came in on the Lane, and were wrecked here in Little River Harbor?

Ans. After that we had carried away our main sheet, and wore ship and stood in for the harbor again—Little River Harbor.

131 Quest. 8. How far was the Spray at that time from the Lane?

Ans. Well, I should say it took her ten minutes till the time she run into us.

Quest. 9. Which of the vessels, the Lane or the Spray, pursued the usual course of vessels entering the Little River Harbor?

Ans. The Lane came in the right way, as vessels always used to come in.

Quest. 10. How was the Lane steering, and how did she have the wind at the time of the collision?

Ans. She was steering right for the harbor, and the wind from the northwest.

Quest. 11. Was the Lane on the wind or before it?

Ans. She was on the wind.

Ques. 12. How was the Spray sailing at the time, or the wind or before it?

Ans. She was sailing before the wind.

132 Ques. 13. Have you seen vessels coming into Little River Harbor?

Ans. Yes, sir.

Ques. 14. Is it customary for vessels to keep close to the northwest reef, or give it a berth?

Ans. To keep close to the northwest reef.

Ques. 15. How close could you approach that reef on that day without receiving any damage?

Ans. About fifty yards.

Quest. 16. How wide is it across the channel at the mouth of Little River Harbor?

Ans. I should judge about 300 yards.

Ques. 17. State when the collision between the Spray and the Lane occurred, how it occured; state the effect of it on the Lane, what became of her afterwards, and what efforts, if any, were made to save her; state particularly.

Ans. It occured just betwixt in the mouth of the harbor of Little River; the Ocean Spray came to windward of us before the wind, close
133 to the reef or over the reef, I could not say, with the bow right on to us; struck us amidships, when we went broadside on to the rock; when we hoist our jib, which swung her off that rock, and we got on to another rock, where we struck; we got some lines out trying to get her off, but it was not possible for us to get her off; the effect on the Lane was, it struck her side in and filled her up with water; the time she struck her it carried away all the halyards, so that we could not hoist the mainsail, set no sails, or else we might have been saved from any further damages.

Ques. 18. Do you know George Kentfield, master and owner of said "Spray?" If yea, state whether you heard him make any statement in regard to said collision, what said statement was, and where and when was it made.

Ans. Yes, sir. I heard him say once that when I went down with him in the schooner that he was thinking it was the Ellen Odelia, and I could not recollect any other remarks that he made.

A map or painting intended to represent Big River and Little River Harbor and the environs and the relative positions of the Ocean Spray and L. C. Lane at different periods shortly before, at, and after the
134 collision was then shown the witness, and in answer to the question whether the relative positions of the two named vessels at different times of the day was given correctly thereon, he answered: "First saw the Spray when she was between number four and five; it is just as it was from the time we started down from Big River, running down just exactly."

JOHN SMITH.

Sworn and subscribed to before me this 22 day July, A. D. 1868.
WM. HEESER, *Notary Public.*

135 *Deposition of H. C. Baird.*

STATE OF CALIFORNIA, *County of Mendocino, ss:*

Henry C. Baird, being duly sworn, deposes and says, in answer to the following interrogations:

Ques. 1. State your name, age, place of residence, and occupation.

Ans. Henry C. Baird; age, thirty-four years; Little River; clerk.

Ques. 2. Have you been to Little River Harbor? If so, state the extent of your acquaintance with that place.

Ans. I have seen vessels, perhaps fifty, going in and coming out of Little River Harbor.

Ques. 3. Do you know the usual course of vessels coming from the northward and northwestward in entering Little River Harbor?

Ans. Yes; I know the usual course; I have seen them most always come in; if the wind is to the northward they have to get above the harbor and then come down.

Ques. 4. Is it customary for vessels coming from the northwest
136 in entering Little River Harbor, whether to give the northwest reef of rocks a berth or keep close to them?

Ans. I think they generally give them the berth.

Ques. 5. Were you at or near Little River Harbor on the fourth day of March, A. D. 1868? If yea, state where you were on that day, and if you had a full view of the entrance to Little River Harbor.

Ans. Yes; I was out on the point directly after the collision between the schooners L. C. Lane and Ocean Spray. I saw the Lane apparently was on the lower rock of the two rocks there; just touched on the rock. The Spray came in between the two rocks and came to anchor.

Ques. 16. State the effect of the collision on the Lane, what became of her afterwards, and what efforts, if any, were made to save her; state particularly.

Answer. She swung off from the rock and appeared to be very much disabled, and went through the harbor and came on to the beach.

Ques. 17. Do you know George Kentfield, master and owner of said Spray? If yea, state if you heard him make any statement in regard to said collision, what said statement was, and when and where it was made.

137 Answer. Yes; I know George Kentfield; I heard him say that he thought it was the schooner Ellen Odelia; heard him say a great deal more, but could not swear to what he did say.

Ques. 8. Do you know of any other matter or thing in regard to said collision? If yea, state the same as fully as if you were particularly interrogated in regard to the same.

Ans. I know they used a great deal of exertion to get the L. C. Lane off, but did not succeed. She became a total wreck.

HENRY C. BAIRD.

Sworn and subscribed to before me this 22nd day of July, A. D. 1868.

WM. HEESER, *Notary Public.*

138

139 *Depositions of Jas. Holman.*

STATE OF CALIFORNIA, *County of Mendocino, ss:*

James Holman, being duly sworn, deposes and says, in answer to the following interrogatories:

Quest. 1. State your name, age, place of residence, and occupation.

Ans. James Holman; twenty-one years; Little River; seaman; have been going to sea seven years.

Quest. 2. Have you been to Little River Harbor? If so, state the extent of your acquaintance with that place.

Answer. Yes; I am acquainted with Little River Harbor, and know the passage or channel to go into Little River Harbor.

Ques. 3. Do you know the usual course of vessels coming from the northward or northwestward in entering Little River Harbor?

Ans. Yes; the general course, if they come from the northward, is southeast by east; then they must run to the southward of the north point of rocks that comes out of Little River Harbor; the course in would be northeast by north after they get below that rock.

140 Ques. 4. Were you at or near Little River Harbor on the fourth day of March, A. D. 1868? If yea, state where you were on that day, and if you had a full view of the entrance to Little River Harbor.

Ans. Yes; I was on the schooner L. C. Lane; on the fourth I was able seaman on the Lane.

Quest. 5. When did you first see the schooner "Ocean Spray" on that day?

Ans. As we came running on down from Big River I seen her about six miles to the northward of Little River Harbor, where she headed her course for.

Ques. 6. How long time was it from when you first saw the Spray until the Lane wore ship, after carrying away the main sheet, until the Lane wore ship and headed in for Little River Harbor?

Ans. About a quarter of an hour.

Ques. 7. How long time elapsed from the heading in the Lane for Little River Harbor until the collision of the Spray and the Lane?

141 Answer About ten minutes.

Ques. 8. Which of the two vessels, the Lane or the Spray, pursued the usual course of vessels in entering Little River Harbor?

Ans. The Lane.

Ques. 9. How was the Lane steering at the time of the collision?

Ans. Northeast by north.

Ques. 10. How was the Spray steering at the time of the collision—what course did she pursue?

Ans. East by south.

Ques. 10½. How did the Lane have the wind at the time?

Ans. On the wind.

Ques. 11. How did the Spray have the wind at the time?

Ans. Coming before it; the wind on the weather quarter.

Ques. 12. What was the wind that day?

142 Ans. Northwest.

Ques. 13. Is it customary for vessels coming in to Little River Harbor to give the northwest reef a berth, or to keep close to it?

Ans. To give it a berth.

Ques. 14. How wide a berth is it necessary to give the northwest reef of rocks on such a day as on said fourth of March?

Ans. About a cable's length.

Ques. 15. What is the distance between the northwest point of rocks and the south reef?

Ans. About half a mile or three-quarters.

Ques 16. Where was the Spray when the Lane first headed into Little River Harbor?

Ans. A mile and a half to the northwest, or two miles—could not tell exactly the distance.

Ques. 17. Did it not look so that the Spray was too close to the northerly ledge of rock—closer than vessels generally run to them?

143 Ans. Yes, she was.

Ques. 18. Whereabouts did the collision between the Spray and L. C. Lane occur?

Ans. To windward of the lower rocks, in the mouth of the harbor, on the south side.

Ques. 19. What is the distance from where the collision occured in to the Little River Harbor?

Ans. About a cable's length to where a vessel can anchor in Little River Harbor.

Ques. 20. How the Spray struck the Lane at the time of the collision; on what side of the Lane?

Ans. Before the main chain, on the port side.

Ques. 21. Who struck the Lane?

Ans. The Ocean Spray.

Ques. 22. After the collision what became of the Lane, and the Spray also?

Ans. The Lane drifted on to the lower rocks, on the south side of Little River Harbor, where she broke her centre-board; then she
144 slewed around and drifted down on the south rocks of Little River Harbor; the Spray, after she got clear of the Lane, run in between the two rocks, and anchored in Little River Harbor.

Ques. 23. Was it the effects from the collision that the Lane drifted on to the south rock?

Ans. Yes.

Ques. 24. After the Lane drifted into Little River Harbor, what became of her, or what was done with her?

Ans. She was on the beach, lying for a week; burnt the anchors out of her head, and get lines fast to schooner what was lying in the harbor; she was most full of water before she ever touched the beach.

Ques. 25. Do you know George Kentfield, master and owner of said Spray? If yea, state if you heard him make any statement in regard to said collision, what said statement was, and when and where it was made.

Ans. Yes; have not heard him make any statement in regard to the collision.

145 A map or painting intended to represent Big River and Little River Harbors, and the environs, and the relative positions of the "Ocean Spray" and L. C. Lane at different periods shortly before, at, and after the collision, was then shown the witness, and in answer to the question whether the relative positions of the two named vessels at different times of the day on which said collision occured was given correctly, he answered, "Yes."

JIMS HOLMOND.

Sworn and subscribed to before me this 22nd day of July, A. D. 1868.

WM. HEESER, *Notary Public.*

146

147 *Deposition of R. G. Coombs.*

STATE OF CALIFORNIA, *County of Mendocino, ss:*

Richard G. Coombs, being duly sworn, deposes and says, in answer to the following interrogatories:

Ques. 1. State your name, age, place of residence, and occupation.

Ans. R. G. Coombs; thirty-three years; Little River; joiner, carpenter.

Ques. 2. Have you been to Little River Harbor? If so, state the extent of your acquaintance with that place.

Ans. I have been here at Little River ever since the mill was started, and some before; that was four years ago.

Ques. 3. Do you know the usual course of vessels coming from the northward or northwestward in entering Little River Harbor?

Ans. I do not know the course by compass, but know the course by land-marks, the course they generally come; I never came in the harbor in the schooner, but I know by looking from the land I know the course.

148 Ques. 4. Do you know the schooner "L. C. Lane" and "Ocean Spray?"

Ans. Yes, I do; or did, at least.

Ques. 5. Were you at or near Little River Harbor on the fourth day of March, A. D. 1868? If yea, state where you were on that day, and if you had a full view of the entrance to Little River Harbor.

Ans. I was to Mr. Silas Coombs' house; had about as plain a view of the harbor as there is anywhere around.

Ques. 6. State at what time during the day (if at all) you first saw the schooner "L. C. Lane" and "Ocean Spray."

Ans. If I recollect right, it was in the afternoon.

Ques. 7. Which of said schooners did you see first, and where was she when you first saw her?

Ans. I saw the Lane first; was in Mr. Coombs' sitting-room when I saw her, the Lane, first; I calculate she was a little south of west
149 of where I stood, judge about 3 miles off shore; would not be positive about the distance.

Ques. 8. How long time elapsed from the time you first saw the Lane until you first saw the Spray?

Ans. I should judge it was somewhere not far from 10 minutes; was 10 minutes at least.

Ques. 9. How long time elapsed when you first saw the Lane heading in for Little River Harbor until the collision?

Ans. As near as I could judge, at least 15 minutes.

Ques. 10. Which of the two vessels, the Lane or the Spray, pursued the usual course of coming into the harbor?

Ans. The Lane.

Ques. 11. Whereabouts the collision between the Lane and Spray occurred?

Ans. In the mouth of the harbor, a little towards me from the reef, what is called north reef.

150 Ques. 12. How far—what is the distance between the northwest reef and the south reef at the entrance of Little River Harbor.

Ans. I should judge it was somewhere about 300 yards; come to think of it, must be more.

Ques. 13. How far off was the Spray when you first saw her on that day?

Ans. I should judge she was somewhere just this side of Big River.

Ques. 14. How did the "Spray" have the wind when you first saw her?

Ans. She had a fair wind.

Ques. 15. How did the Lane have the wind when you first saw her?

Answer. It was blowing across the deck.

Ques. 16. State if you saw when the Spray crossed the northerly ledge of rocks, at the entrance to the harbor, and whether that is the usual place for vessels to cross the ledge.

Ans. Yes; the Spray did cross said ledge; there is no need of
151 them crossing the ledge at all; they never do it unless it is by an accident; never knew one crossing there before; about 15 minutes before the Spray crossed, it broke so that I could see the rock.

Ques. 17. State whether or not the Spray attempted to cut across the ledge of rocks, and what was the consequence.

Ans. Yes, she did cut across; the consequence was her running into the Lane; that was my idea.

Ques. 18. If you saw the collision, state how the same occured; how each vessel was sailing at the time; and how and where they struck each other.

Ans. The way I was standing the Lane was coming pretty near head

towards me; the Spray was coming, if I recollect right, a little to the left when she came over the ledge, or a little before; there was a big sea lifted her and carried her over the ledge, and when she was on top of the sea she swung around. It was nearly an eighth of a circle, and struck the "Lane" in the side with her bow.

152 Ques. 19. State the effect of the collision on the Lane, what became of her afterwards, and what efforts, if any, were made to save her. State particularly.

Ans. The effect was, they had to run her ashore to keep her from sinking; I know there was a number of men to work on her for some number of days; her bottom was all stove up clear up to her bilge amidships, and there is a piece of the wreck lying down there now; after they struck they came sides together, and they held so for some little time, and then one of them ranged ahead of the other; cannot recollect which it was; I think it was the Lane; while they were together they got to the southward so far they could not get in through the natural channel; they came in between the two rocks in the outside of the harbor; the "Lane" caught on the lower rock and held there some few minutes; she worked around the rock into the harbor; she run past the anchorage and run on to the beach.

A map or painting intended to represent Big River and Little River Harbor, and the environs, and the relative positions of the Ocean
153 Spray and L. C. Lane at different periods shortly before, at, and after the collision, was then shown the witness, and, in answer to the question whether the relative positions of the two named vessels at different times of the day of collision was given correctly thereon, he answered:

"When I first saw the 'Spray' she was somewhere near where she is marked No. 4 on the map. When I first saw the 'Lane' she was somewhere betwen No. 5 of the 'Lane' and the Suie Johnson."

R. G. COOMBS.

Sworn and subscribed to before me this 22nd day of July, A. D. 1868.

WM. HEESER, *Notary Public.*

154 After taking the deposition of R. G. Coombs, adjourned over to July 23rd, 1868.

WM. HEESER, *N. P.*

On July 23rd, 1868, being otherwise engaged, upon the appearing of the afore-named claimant did not proceed with the taking of depositions, but adjourned over to the 24th day of July, A. D. 1868.

WM. HEESER, *N. P.*

On July 24th, 1868, proceeded with the taking of depositions.

155 *Deposition of T. Brown.*

STATE OF CALIFORNIA, *County of Mendocino, ss:*

Thomas Brown, being duly sworn, deposes and says, in answer to the following interrogatories:

Ques. 1. State your name, age, place of residence, and occupation.

Ans. Thomas Brown; thirty-three years; Anderson Valley, in Mendocino County; lumberman; followed the sea fifteen years.

Ques. 2. Have you been at Little River Harbor? If so, state the extent of your acquaintance with that place.

Ans. Yes, sir; I have been there twice; I think, to the best of my knowledge, that it is not wide enough for two vessels to pass each other in a heavy breeze of wind going in to Little River, right in the channel.

Ques. 3rd. Do you know the usual course of vessels coming from the northward or northwestward in entering Little River Harbor?

Ans. No, I cannot say that I do know the course.

156 Ques. 4. Do you know the schooner "L. C. Lane" and "Ocean Spray?"

Ans. Yes, sir.

Ques. 5. Were you at or near Little River Harbor on the fourth day of March, A. D. 1868? If yea, state where you were on that day.

Ans. I came passenger on board the L. C. Lane; we [we] were bound to Big River, but they hoist the flag at half-mast at Big River not to come in; I thought it was too rough to go into Big River Harbor; after they hoist the flag at half-mast we carried away our main sheet; at the time we carried away our main sheet the "Ocean Spray" was about three miles astern of us; they both steered the usual course for Little River; by the time that the captain of the "Lane" got his main sheet rove and his main sheet hoisted the "Ocean Spray" then, I should judge, was about a quarter of a mile astern of us, and gaining on us.

Ques. 6. Which of said schooners, the Lane or the Spray, arrived first off the northerly reef at the entrance to Little River Harbor?

157 Ans. We were ahead of the Ocean Spray all the time.

Ques. 7. If the "Lane" arrived off the reef referred to first, state where the Spray was at that time.

Ans. About a quarter of a mile astern of the "Lane."

Ques. 8. When the Lane arrived off the reef, what course did she take, and how did she have the wind? State particularly.

Ans. I could not state what course she was steering by compass; she had the wind free.

Ques. 9. State how the Spray had the wind at that time.

Ans. She had the wind free; running before the wind.

Ques. 10. How far was the "Lane" off the northwest point of rocks at the entrance to Little River Harbor when she wore ship, an headed in for the harbor?

Ans. She was just about a mile and a half.

158 Quest. 11. How far was the Spray from the Lane at the time?

Ans. About one-quarter of a mile.

Ques. 12. How long time elapsed from the heading of the "Lane" into Little River Harbor until the collision?

Ans. It could not have exceeded half an hour.

Ques. 13. Did the Lane take the middle of the channel, or the "Spray?"

Ans. The Lane had the middle of the channel at the time of the collision.

Ques. 14. Did the Spray come the same way that you did or in a different direction?

Ans. On a different direction.

Ques. 15. State whether or not the "Spray" attempted to cut across the northerly ledge of rocks at the entranceto Little River Harbor, and what was the consequence.

159 Ans. All that I can state is that the Spray attempted to get ahead of us, and to cut us off in going into Little River Harbor.

Ques. 16. If you saw the collision between the Spray and the Lane, state how the same occurred, how each vessel was sailing at the time, and how and where they struck each other.

Ans. The Ocean Spray ran into the L. C. Lane, cut away the main

rigging of the Lane, and the lower mainsail came down; the Spray struck the "Lane" right amidships, on the port side; she struck her with her bow.

Ques. 17. State further the effect of the collision on the "Lane," what became of her afterwards, and what efforts if any were made to save her; state particularly.

Ans. I think that after she struck the Lane, the Lane began to make water; the effect of the collision was, that the "Ocean Spray" sunk the Lane; at the time we came into Little River Harbor we was full of water, the hold was full of water; the captain tried the utmost of his power
160 to save the vessel; we could not do anything with her; her hold was full of water; we could not have any control over her after the "Ocean Spray" struck us.

Ques. 18. How wide is it across from reef to reef at the mouth of Little River Harbor?

Ans. I could not tell exactly; I think that there is just room enough in smooth weather for two vessels to pass each other.

A map, or painting, intended to represent Big River and Little River Harbors, and the environs, and the relative positions of the "Ocean Spray" and "L. C. Lane," at different periods, shortly before, at, and after the collision, was then shown the witness, and in answer to the question whether the relative positions of the two afore-named vessels at different times of the day of collision was given correctly thereon, he answered: "I think it is correct."

his
THOMAS × BROWN.
mark.

Sworn and subscribed to before me this 24th day of July, A. D. 1868.
WM. HEESER, *Notary Public.*

161 *Deposition of J. E. Carlson.*

STATE OF CALIFORNIA, *County of Mendocino, ss:*

J. E. Carlson, being duly sworn, deposes and says, in answer to the following interrogatories:

Ques. 1. State your name, age, place of residence, and occupation.

Ans. J. E. Carlson; forty-one years; Mendocino; hotel-keeper; experienced seaman.

Ques. 2. Do you know the schooner "L. C. Lane," and "Ocean Spray?"

Ans. I do.

Ques 3. Where were you on the fourth day of March, A. D. 1868?

Ans. I was at home at Mendocino, on my stoop.

Ques. 4. State at what time during that day (if at all) you first saw the schooner "L. C. Lane" and the "Ocean Spray."

Ans. The first when I stood on the stoop, the schooner Mendocino came into the harbor to anchor in Mendocino Harbor; I left my
162 stoop and went down on the point at Mendocino after she went to anchor; I went down towards the flag-pole; I saw the schooner L. C. Lane way outside of Mendocino Harbor, about 5 miles to the northward; I sang out to them, Here is the Lane coming in; at that time I did not see any other vessel than the Lane; Captain Lansing at that time sang out to hoist the flag on half-mast. I asked Captain Lansing why he don't let her come in; he answered me he could do as he liked about that himself; our moorings are all mixed up so we have not got any moorings for our vessels, and all blame is thrown off our shoulders

when we hoist the flag at half-mast in case of any accident. At that time we was speaking—me and Captain Lansing—she was within a mile of the point of Mendocino; he had his peak of the mainsail lowered down; he keeped off toward Little River; the "L. C. Lane" wore down towards Little River; at that time I could not see any other vessel but the Lane; I then went up to my house; I stooped on the stoop, and looked at the L. C. Lane; I discovered that his mainsail jibbed over, and all at once I see the mainsail was lowered down; he headed his vessel out to the westward under foresail and jib; he stood off so
163 far as I could judge from me looking at him, about a mile and a half; I then saw the schooner Ocean Spray right abreast of our blacksmith shop, on the point at Mendocino, but at the same time I see the Lane lower down his foresail and jibed round his vessel to the northward and eastward; I see them setting his mainsail at that time, after he got around; at that time the Ocean Spray shook a reef out of her foresail; she had a reefed foresail and mainsail and jib on her; when I saw her first she had what I would judge been going about ten miles an hour; when she shook the reef out it was blowing very hard from the northwest; then I saw the L. C. Lane heading right in for Little River on the wind, and the Ocean Spray was right before the wind; I saw the L. C. Lane closing the point from where I stood on my stoop, when the Ocean Spray was the last one that I could see from where I stood.

Ques. 5. What distance was the Spray astern or to the northwest of the "Lane" when the Lane wore ship and headed in for Little River Harbor?

Ans. When the Lane wore ship the "Ocean Spray" was three miles away from her.

164 Ques. 6. How far was the Lane from the mouth of Little River Harbor at that time?

Ans. A mile and a half.

Ques. 7. Do you know George Kentfield, master and owner of the Ocean Spray? If yea, state if you heard him make any statement in regard to said collision, what such statement was, and where and when it was made.

Ans. I do know said George Kentfield; known him for years; have heard him make statement. I went down to Little River; I was down on their wharf where they pile their lumber; Captain Kentfield and Captain Scott and Mr. Stickney and myself was there, and, talking about the accident, Captain Kentfield stated he would teach some of those Dutchmen how to manage a vessel; I told him then he might find some Dutchmen might teach you how to manage one. I think I can teach you myself. Captain Scott says to Kentfield, I should think you ought to have seen the schooner before you come on top of her; he says he did not see her from the time she wore around. He says the time she stood off shore he saw her very plain; saw her actions of her
165 lowering her sails. Kentfield said, I thought it was the Ellen Odelia all the time; he told Capt. Scott he thought it was you, and you seen it so rough, you would wait till I got in to see how I got in. Capt. Scott told Kentfield, I think I can go in wherever you do, without waiting for another vessel to go ahead of me. Captain Scott told him, I better look out when I see you around, if you are coming to run vessels down; he says, I will lay outside and wait next time I see you coming, but if we come too close together I will try to get my vessel's head agains yours, to give them both a fair shake. Mr. Stickney told Kentfield, You took desperate chances to come over that rock. Kentfield answered him, That I thought it was the Ellen Odelia, and that I was

bound to beat her in, if I could; I won't allow nobody to beat me if I can help myself.

J. E. CARLSON.

Sworn and subscribed to before me this 24th day of July, A. D., 1868.
WM. HEESER, *Notary Public.*

After the taking J. E. Carlsen's deposition, adjourned over to July 25th, 1868.

WM. HEESER, *N. P.*

166 On July 25th, 1868, proceeded with the taking of depositions, as follows:

167 *Deposition of Silas Coombs.*

STATE OF CALIFORNIA, *County of Mendocino, ss:*

Silas Coombs, being duly sworn, deposes and says, in answer to the following interrogatories:

Ques. 1. State your name, age, place of residence, and occupation.

Ans. Silas Coombs; fifty-one years; Little River; Mendocino County; farmer and lumberman.

Ques. 2. Have you been to Little River Harbor? If so, state the extent of your acquaintance with that place.

Ans. I have been acquainted with it six years.

Ques. 3. Do you know the usual course of vessels coming from the northward or northwestward in entering Little River Harbor?

Ans. I do not know the exact course; if they are coming from the northward or northwestward they would be running in a southerly course, and when they come around the north head they will have to run a northerly course, or northeast.

Ques. 4. Do you know the schooners "L. C. Lane" and "Ocean Spray?"

168 Ans. Yes.

Ques. 5. Were you at or near Little River Harbor on the fourth day of March, A. D. 1868? If yea, state where you were on that day, and if you had a full view of the entrance to Little River Harbor.

Ans. I was near the harbor, was at my house; yes, had a full view to entrance of Little River Harbor.

Ques. 6. State at what time during that day (if at all) you first saw the schooners "L. C. Lane" and "Ocean Spray."

Ans. I think it was in the afternoon.

Ques. 7. Which of said schooners did you see first, and where was she when you first saw her?

Ans. I saw the Lane first; she was to the northward and westward of Little River Harbor.

Ques. 8. If you say you saw the schooner "Lane" first on that day, state where the Spray was at that time, and how long after, and where did you first see the "Spray."

169 Ans. When I first saw the Lane I did not know where the Spray was. I did not at first see her, not for some 10 or 15 minutes; before I saw the Spray, [I saw the Spray,] she was nearer the land, close under the land when I saw her.

Ques. 9. Which of said schooners, the Lane or the Spray, arrived first off the northerly reef at the entrance to Little River Harbor?

Ans. The Lane was the first.

Ques. 10. If you say that the Lane arrived off the reef referred to first, state where the Spray was at the time.

Ans. She was to the northward and westward.

Ques. 11. When the Lane arrived off the reef, what course did she take? State particularly.

Ans. She was standing in; she was coming in to the harbor.

Ques. 12. If you say that the Lane headed into the channel of Little River Harbor, state where the Spray was at that time. How long
170 before the collision was this, and how did each of the vessels have the wind from that time to the moment of collision?

Ans. The Spray was just to the northward, right close to the reef, some two or three minutes, (answering to the question how long before the collision was this,) and the Spray was before the wind; the Lane was on the wind; they were running nearly at right angle with each other.

Ques. 13. If you say you know the usual course pursued by vessels in entering Little River Harbor, state whether the Lane or the Spray pursued that course.

Ans. The Lane was taking the usual course, but the Spray was rather too near the reef, or north head, from what they generally do.

Ques. 14. State if you saw where the Spray crossed the northerly ledge of rocks at the entrance to the harbor, and whether that is the usual place for vessels to cross the ledge.

Ans. No; it is not the usual place where she crossed it; never saw a vessel cross there before.

171 Ques. 15. State whether or not the Spray attempted to cut across the ledge of rocks, and what was the consequence.

Ans. Yes, sir; I think she came across the rocks or the reef, and then when she struck the Lane, as she crossed the rocks, there is where she struck the Lane after she crossed the rocks at that time.

Ques. 16. If you saw the collision, state how the same occured, how each vessel was sailing at the time, and how and where they struck each other.

Ans. The Lane was standing in the harbor, coming in, and the Spray come across the rocks, and when she come over across the rocks she struck the Lane in the side by the main chains, by the main rigging; the Spray struck the Lane with her bow cutwater, bow foremost; it was on or near the reef; the Lane was in the channel near the entrance of the harbor; when the Spray came over the reef she struck the Lane.

Ques. 17. State the effect of the collision on the Lane, what became of her afterwards, and what efforts, if any, were made to save her; state particularly.

172 Ans. She came into the harbor nearly afterwards, but touched a rock, stopped there a few minutes, but swung off the rock, and then she come on to the other side of the harbor and struck down on the rocks on the shore; I see his mainsail was droped down, or partly down; she went ashore on the rocks, on the opposite of the rock from where she first struck on; there was efforts made to save her, all the efforts that could be made at the time, I suppose.

Ques. 18. Was it caused by this collision, that the Lane drifted on that rock and went ashore on the rocks?

Ans. Yes.

Ques. 19. Do you know George Kentfield, master and owner of said "Spray?" If yea, state if you heard him make any statement in regard to said collision, what siad statement was, and when and where it was made.

Ans. Yes; I know that he is captain of the Spray; I know him. Yes; I heard him make a statement, I think it was in the store at Little River I heard him; I think it was the next day after the collision,
173 after they struck; he said at the time when he was coming in to Little River, standing in, he said he did not know that the Lane was coming in when he saw her off the harbor; he said he did not know it was the Lane, that he thought it was the Ellen Odelia, or something of that kind; yes.

Ques. 20. How far was the Lane off the northwest point when you first saw her?

Ans. She was some mile and a half or two miles, I should judge.

SILAS COOMBS.

Sworn and subscribed to before me this 25th day of July, A. D. 1868.

WM. HEESER, *Notary Public.*

174

175 *Deposition of R. Stickney.*

STATE OF CALIFORNIA, *County of Mendocino, ss:*

Ruel Stickney, being duly sworn, deposes and says, in answer to the following interrogatories:

Ques. 1. State your name, age, place of residence, occupation.

Ans. Ruel Stickney; forty-three years; near Little River; lumberman and farmer.

Ques. 2. Have you been to Little River Harbor? If so, state the extent of your acquaintance with that place.

Ans. I have been here for the last five years; pretty well acquainted with it.

Ques. 3. Do you know the usual course of vessels coming from the northward or northwestward in entering Little River harbor?

Ans. Well, coming from the northwest, if they get down abreast the harbor, they would steer about northeast.

Ques. 4. Do you know the schooners "L. C. Lane" and "Ocean Spray?"

Ans. Yes, sir.

176 Ques. 5. Were you at or near Little River Harbor on the fourth day of March, A. D. 1868? If yea, state where you were on that day, and if you had a full view of the entrance to Little River Harbor.

Ans. I was, I think, up in the woods the day of the collision; don't recollect the day.

Ques. 6. What is the distance from the northwest point at Little River Harbor, at the entrance, to the south reef?

Ans. Well, it varies some; I think it would go six or seven hundred feet.

Ques. 7. Do you know George Kentfield, master and owner of the "Ocean Spray?" If yea, state if you heard him make any statement in regard to the collision between the "Ocean Spray" and the L. C. Lane, what said statement was, and where and when it was made.

Ans. Yes, sir; I know the man. I heard him talk about it a good deal, but could not say now where it was; a short time afterwards while he was here. Yes; I heard him say he thought it was the Ellen
177 Odelia; he said he thought she was coming in here after a load. He said that if a vessel wanted to come in here, before he could,

to get a load, he would run it down; that would be the idea; that if they wanted to beat him in here, get in here first. I don't know whether the man was joking or whether he was in earnest. I asked the man whether he did not see the other vessel ahead of him, and he made the reply that he did not pay any more attention to the other vessels than if it was a dog; I heard him say that he was sorry that it happened. I heard him say that after she came ashore here after she came on to the rocks, that she never would be got off; that would not be worth it.

Ques. 8. Did Capt. Scott make any proposition to Capt. Kentfield, that he would be on his side if Capt. Kentfield would give him a thousand dollars, alluding to a probability of a suit in consequence of collision?

Ans. I think I heard them talking in a kind of blackguarding way. He says to George, You give me a thousand dollars, and you will be all right, or in about them words. I suppose he was trying to plague George about it.

178 Ques. 9. Did George make any answer to that proposition?

Ans. I do not recollect what answer he made.

10. A map representing Little River Harbor and Big River Harbor and the position of the Lane and Spray, respectively, at different times of the day of collision, was shown deponent, and in answer to the question whether Little River Harbor, as depicted thereon, looked natural, he answered, "Pretty near."

RUEL STICKNEY.

Subscribed and sworn to before me this 25th day of July, A. D. 1868.

WM. HEESER, *Notary Public.*

Whereupon the claimant N. C. Erlandson did not have any more witnesses to examine before me at present; the remaining witnesses named in his affidavit, namely, Jerome B. Ford, Freeman Smith, Charles Smith, and ——— Hinkley, being absent, adjourned sine die.

WM. HEESER, *N. P.*

179 UNITED STATES OF AMERICA,

District of California, County of Mendocino, ss:

I, William Heeser, a notary public in and for said county, duly commissioned and sworn, do hereby certify that the reason for taking the foregoing depositions is, that, as appears from the affidavit of N. C. Erlandson, the witnesses are material and necessary in the cause in the caption of the said deposition named, and that they, and each of them, live at a greater distance from the place of trial of the cause in which their depositions are to be taken than one hundred miles.

I further certify that no notification of the time and place of taking the said deposition signed by me was made out and served on the claimant or his proctor to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit, because, it appears from the affidavit of N. C. Erlandson, that neither is within one hundred miles of the place of the taking of such deposition; and I further certify that on the 21st, 22nd, 24th, and twenty-fifth day of July, in the year of our Lord one thousand eight hundred and sixty-eight, I

180 was attended by the libelant N. C. Erlandson, and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions

were by me reduced to writing in the presence of the witnesses, and from their statement, and after carefully reading the same to the witnesses, they subscribed the same in my presence; and the said libellant N. C. Erlandson was present during the taking of the deposition of said witnesses. I have retained the said depositions in my possessions for the purpose of sending the same by Wells-Fargo's express to the court for which the same were taken. And I do further certify that I am not counsel nor attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal this twenty-fifth day of July, in the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL.] WM. HEESER, *Notary Public.*

181 *Interlocutory decree.*

At a stated term of the district court of the United States for the district of California, held at the city and county of San Francisco, on Thursday, October 1st, A. D. 1868:

Present, Hon. Ogden Hoffman, district judge.

N. C. ERLANDSON ET AL.
vs.
SCH. "OCEAN SPRAY," &c.

This cause having been heard on the pleadings and proofs, and having been argued by the advocates for the respective parties, and due deliberation being had in the premises, it is ordered, adjudged, and decreed that the collision in the pleadings mentioned, and the damages and costs incurred by the libellants in consequence thereof, occurred by the negligence and fault of the schooner "Ocean Spray," and the libellants are entitled to recover the damages by them sustained thereby; it is further ordered that it be referred to the clerk to ascertain and report to the court with convenient speed the value of the schooner L. C.
182 Lane, mentioned in the libel, her tackle, apparel, and furniture, at the time of said collision, the cargo then on board of her belonging to libellants, or for which they are responsible, and the amount of loss in the premises sustained by the libellants by means of such collision, and that on the coming in and confirmation of such report, a decree be entered therefor in behalf of libellants and for their costs to be taxed.

Entered October 1st, 1868.

GEO. E. WHITNEY, *Clerk,*
By J. NEALL, *D. C.*

At a stated term of the district court of the United States for the district of California, held at San Francisco, on Tuesday, September 29th, A. D. 1869:

Present, Hon. Ogden Hoffman, judge.

(Title of cause.)

And now, at this day, the court delivers its written opinion herein, and it is ordered that a judgment be entered herein in favor of libellants, and that the cause be referred to the commissioner to ascertain and report with convenient speed the damage sustained by libellants.

183 *Report of commissioner.*

In the district court of the United States for the district of California.

N. E. ERLANDSON ET AL.
vs.
SCH'R "OCEAN SPRAY," ETC.

In pursuance of a decretal order made in the above-entitled cause, by which it was referred to the undersigned to ascertain and report the amount due to libellants from the sch'r "Ocean Spray," her tackle, apparel, and furniture, and from George Kentfield, claimant, I, George E. Whitney, referee as aforesaid, do respectfully report that I have been attended by the proctors for the respective parties, and by the witness whose testimony is anexed hereto; that I have taken and examined the testimony of all of the witnesses produced before me, and do find as follows:

First. That the sch'r L. C. Lane, her tackle, apparel, and furniture, were, at the date of the collision, worth the sum of twelve thousand dollars in gold coin of ($12,000) of the United States, or the sum of sixteen thousand six hundred and sixty-six and $\frac{66}{100}$ ($16,666$\frac{66}{100}$) dollars in currency; that she was a total loss by reason of the collision.

184 Second. That the value of the provisions and clothing, the property of libellants, on board the "L. C. Lane" at the time of the collision aforesaid, which was lost by reason of said collision, was one hundred and twenty-five ($125) dollars in gold coin of the United States, or the sum of [of] one hundred and seventy-three & $\frac{61}{100}$ (173\frac{61}{100}$) dollars in legal-tender currency.

Third. In pursuance of the decretal order of the court, I find that the cargo on board of said schooner "L. C. Lane," at the time of said collision, and which was lost by reason thereof, was the value of two hundred and eighty (280) dollars in gold coin, or three hundred and eighty-eight & $\frac{88}{100}$ (388\frac{88}{100}$) dollars in legal-tender currency. I further report in regard to this item of damages that no testimony has been taken before me touching or bearing upon the liability of the libellants for the loss of said cargo beyond the following statement in the testimony of libellant Erlandson, viz.: "This cargo did not belong to me, but the shippers held me responsible, and sent me a bill for that amount, which I promised to pay." This item of loss is therefore subject to the opinion of the court as to the liability of the libellants therefor. The testi-

185 mony on this subject was taken under the objection of claimants' proctor.

Fourth. I further report at the request of the proctors of the parties, subject to the opinion of the court as to the liability of the claimant therefor, that the loss sustained by libellants by reason of their inability to fulfil the charter under which the "L. C. Lane" was at the time of the collision employed, on account of the loss of said schooner, was seven thousand two hundred dollars in gold coin, or the sum of ten thousand dollars in ($10,000) legal-tender currency. The only testimony upon this item of loss was that of libellants, and was taken subject to the objection of claimants' proctor, that such damages are not allowable under the pleadings.

Lastly. I report that if the court shall be of opinion that the libellants are entitled to recover, in addition to the value of the L. C. Lane, with the clothing and provisions on board at the time of her loss, the value of the cargo and the damages mentioned in the last preceeding

article of this report, that the libellants have sustained loss by reason of the said collision, the sum of nineteen thousand six hundred and five (19,605) dollars in gold coin of the United States, or twenty-seven thousand two hundred and twenty-nine & $\frac{16}{100}$ (27,229$\frac{16}{100}$) dollars in legal-tender currency.

186 If the court shall be of the opinion that the item of loss in the last preceding article of this report ought not to be allowed, I report that the damage sustained by libellants, by reason of the loss of said schooner "L. C. Lane," is twelve thousand eight hundred and ninety (12,890) dollars in gold coin, or seventeen thousand nine hundred and two & $\frac{78}{100}$ (17,902$\frac{78}{100}$) dollars in legal-tender currency. These amounts include interest on the value of the schooner and provisions and clothing from the 4th day of March, 1868, to date.

If the court shall be of opinion that the items of loss on the charter, and loss on the cargo, ought not to be allowed, I report that the damages sustained by libellants by reason of the loss of said schooner "L. C. Lane," her tackle, &c., together with clothing and provisions, is twelve thousand six hundred and ten (12,610) dollars in gold, or seventeen thousand five hundred and thirteen & $\frac{89}{100}$ (17,513$\frac{89}{100}$) in legal-tender currency. These amounts include interest from the 4th day of March, 1868, to date.

The foregoing report is made according to the decretal order of the court, and is based partly upon the fact (apparently assumed by
187 both parties) that the libellant Wm. M. Hendry was owner of one-half of the "Lane" when she was lost. From the libel and the testimony taken before me, it appears that Mr. Hendry is the assignee of Capt. Lee, who was a half-owner at the time of the loss. What are the rights of Mr. Hendry as assignee of Capt. Lee, and how far he would be entitled to share in joint judgement with his co-libellant Erlandsen, as to several of the items of damages claimed, no report is made, that matter not having been referred to me, and no testimony as to the character and the extent of the assignment having been taken before me.

San Francisco, 16 October, 1868.

GEO. E. WHITNEY,
Clerk and Commissioner.

188 *Report of commissioner.*

In the United States district court, district of California.

N. C. ERLANDSON ET AL.
vs.
SCHOONER "OCEAN SPRAY."

SAN FRANCISCO, *Oct. 2nd*, 1868.

At an examination of witnesses in the matter of the reference made to me, Geo. E. Whitney, clerk of the U. S. dist. court, by an order entered in this cause, and dated October 1st, 1868, the following testimony was given, to wit:

Joseph Ringot, being sworn on behalf of libellants, testified as follows:

My name is Joseph Ringot; am over twenty-one years of age; reside in San Francisco; have formerly been a shipwright; am now marine surveyor for the insurance companies of San Francisco; have held that position two years; the duties of the office are to examine

189 vessels, and class them in order to fix the rates of insurance by determining the character and qualities of the vessels that apply for insurance our offices. I was aboard the L. C. Lane several times while her hull was being completed, and while she was being rigged, and I examined her afterwards for the purpose of rating her. Exhibit "A" is a copy of my report made to the insurance companies. No center-board vessel is rated over "A 2;" the Lane was a center-board vessel; the words "A 2, good," means that she was better than the general run of her class of vessels; as my report expresses, the work on the Lane was very well done, and fastened, and the materials put in her were good of their kind. I should judge, from knowledge of building other vessels of her kind on this coast, she was worth from $12,000 to $15,000.

Cross-examined:

Am not in the habit of buying and selling vessels. The way I estimate her value is, that I have made it my practice in surveying vessels to enquire their value. I have drawn up a report for the insurance companies, published Dec., 1867, showing the relative costs of various classes of vessels on this coast; this report I made for the board
190 of marine underwriters, and each company represented in the board is furnished with an abstract of a copy; this is a copy from my book, that I keep; this examination was as thorough as I could make without having the vessel out of water; am a stockholder in three of these insurance companies, viz: "California," "Merchants' Mutual," "Home." Could not say that this vessel was insured in either of these companies; think she may have been insured in the "Home Mutual."

JOSEPH RINGOT,
Surveyor for Marine Underwriters.

Surveyor's report.

AM. SCH'R L. C. LANE.—Captain, Charles Lee; tons, $92\frac{95}{100}$; decks, one, T. C.; draft, $7\frac{1}{2}$ feet; wood, all pine; fastenings, galv'd iron sp'k's, & butt bolts, & com. iron & tree nails; when metalled, paint; when caulked, when new; where and when built, San Francisco, year
191 1867, March; builders, O. Raymond; hails from, San Francisco; owner, captain; dimensions: length, 90 feet; breadth, 26 feet; depth, 8 feet; model, medium C. B.; cables, two bowers, 3 warps; anchors, two do., one kedge; boats, one; rigging, new; sails, one new suit; spars, new; rate, "A" "2" good.

REMARKS.—Has one thick streak on the floor, four thick streaks in the bilge, one streak of clamp, natural crook knees in deck frame, the breast hooks the same; the mast partners are well secured with knees; the work is well done and well fastened; an oak stock to rudder; the frame is cut out of straight wood. She is entitled to the confidence of the underwriters and shippers.

Surveyed at San Francisco, March 26th, 1867.

Duplicate copy of survey.

JOSEPH RINGOT,
Marine Surveyor.

192 N. C. Erlandsen being duly sworn, testified as follows, to wit:

My name is N. C. Erlandsen; am over 21 years of age; life in in San Francisco; am a part owner in the vessel, and one of the libel-

lants. I think the Lane was launched in the latter part of March, 1867. I first purchased in her on the 29th Sept., I think, 1867; I purchased one-half of her from Chas. J. Lee, for the sum of $6,250 in gold coin; after I purchased her I bought a larger chain and anchor and considerable additional lines, and a double patent wench; these cost between $600 and $700.

We left, I think, to go on the voyage on which she was lost on the 27th February, 1868.

(Proctor for claimants objects to any testimony being given as to the amount of provisions, or cargo, or clothing lost by the collision, the property of libellant.)

When we started from San Francisco on this voyage we had $120 worth of provisions on board belonging to libellants.

There was about ⅔ of it left at the time of the collision. The value of the bed-clothes belonging to libellant, and of wearing apparel, was $45 or $50. There was a general cargo of merchandise on board; about seven or eight of the value of $280 or $290; this cargo did not
193 belong to me, but the shippers held me responsible, and sent me a bill for that amount, which I have promised to pay.

(Proctor for claimants objects, and it is stipulated that all this testimony is taken subject to all objections.)

At the time my vessel was lost I had a contract or charter with the Mendocino Lumber Co., which ran until the 15th of Nov'r, 1868. This charter was rendered void by the destruction of my vessel. The charter gave me six dollars per M. for all the lumber I could bring to San Francisco up to the 15th of November. I could have brought, with ordinary luck, two loads a month; sometimes I could have made three loads, but two loads was the average. In each load I could have 125,000 feet, which would have given me $750 a load, being $1,500 a month; out of that I would have to pay my expenses, which were $500 a month, leaving a net profit of $900 a month. This, of course, would be if no accident happened to the vessel. Ten days before I bought her I offered Lee $13,000 for the whole schooner; he would not accept it. I examined her then thoroughly to see if she was worth it. I subsequently bought her at the rate of $12,500. I think that the extra money (about $700) that I put on her made her worth at the time she started on the trip on which she was lost as much as when she was new. She had not
194 experienced heavy weather or any accident, except that while lying alongside of the wharf a bark drifted afoul of her stern; but she was repaired and made as good as new.

Cross-examination:

I lost two coats, two pair of pants, two pair of boots, some books, and a new stove-pipe hat that cost me $10; of bedding, I lost two pulu mattrasses and all the bed-clothes; the whole value of bedding and clothing lost I estimate at between $40 and $50; I had no opportunity to get them ashore; I got part of my clothing ashore; just as I got ashore I had to buy a pair of pants that cost me $7 50; part of the cargo I had aboard belonged to Eugene Brown, of Mendocino; the balance belonged to a man at Mendocino, whose name I don't recollect; a part of their cargo I got ashore after it was submerged; none of it belonged to me; I see by looking at the bills which were presented against me that the name of the man I could not recollect is A. Chalfant; I have not been fulfilling my charter-party, for when I got back I found that the Mendocino Lumber Company had engaged another vessel to take the place of the "Lane," she being lost; after my vessel was stranded she

broke to pieces, and I sold her for the benefit of the underwriters;
195 I had no interest in the purchase; have had no interest in the wreck since that time; have not been there since they took depositions in the case; own small portion of a vessel now called the "Kittie Stevens," built in San Francisco.

N. C. ERLANDSEN.

Peter Lund, being duly sworn, testified as follows:

My name is Peter Lund; am over 21 years of age; am a ship-carpenter; have been a ship-carpenter in San Francisco seventeen years; I worked on the Lane when she was being built; Otto Raymond built her for Chas. Lee; she was built by day's work; she was a very good built vessel and had natural crooked knees; she was worth when she was finished, I should think, about $13,000.

Cross-examination:

Am a little acquainted with the value of vessels; have never dealt in them, and don't profess to be very familiar with their value.

PETER LUND.

J. J. Fransen, being duly sworn, testified as follows, to wit:

196 My name is J. J. Fransen; am over 21 years of age; reside in San Francisco; am a ship-builder; have been working at that for the last nine years in San Francisco; am a master builder, and have built about 20 vessels in San Francisco during that time.

The general character of vessels built by me was fore-and-aft vessels. I knew the "schooner" Lane; I examined her just about the time she was finished; should say she was worth from $12,000 to $13,000 dollars, I mean when complete, except provisions. She was well built as far as I could see. The last time I saw her was about two or three months before the collision; I was then aboard of her and examined her and found her in the same condition in which she was before.

Cross-examination:

Am pretty well acquainted with value of vessels, because I own vessels and have built a great many as master builder; my place of business is at North Beach; have built the Abraham Lincoln, A. G. Monge, Kittie Stevens, Steiner Nickloisen, J. J. Fransen, B. H. Ramsdell, and others; I have bought and sold vessels in this market.

T. T. FRANSEN.

This reference adjourned to Monday afternoon at three o'clock.

197 MONDAY, *Oct.* 5, 1868.

Reference continued from Friday, Oct. 2nd, 1868.

Charles Lee, sworn on behalf of libellant:

(It is admitted that the price of greenbacks is seventy cents on the lar.)

My name is Charles Lee; I am over 21 years of age, and live in San Francisco; I was one of the owners of the schooner "L. C. Lane" at the time of collision; I owned one-half of her; she was launched in April, 1867; I built her; I paid for building her; Otto Ramond was my builder; she cost over $13,000 in gold coin: I sold one-half of her to Capt. Erlandsen; he paid me $6,250 for one-half of her, in gold coin; after I had sold my half interest to Erlandsen, there was about one thousand

dollars in gold spent on her for anchors, chains, &c., &c., & these was on her at the time of the collision.

(Claimants' counsel object to all evidence regarding charter-party.)

We had a contract with the Mendocino co., Godfrey, Sillen & Co., for the Lane to carry lumber during the summer until some time in November at six dollars in gold coin per thousand; could have made
198 probably five loads in two months with ordinary good luck; we could have carried from 115 to 125 thousand feet of lumber at each load; our expenses would have been 4 to $500 per month; I saw her just before she left on the voyage the collision occurred, and I think she was worth at that time in the neighborhood of $14,000 in gold coin.

Cross-examination:

I have never been engaged in buying and selling vessels; I judge of the value of Lane for the money I paid out for building her; she was a little over a year old.

CHARLES LEE.

Sworn and subscribed before me this 5th October, A. D., 1868.

S. NEALL, *U. S. Com'r.*

Charles F. Kildahl, sworn for libellants:

I am a mariner; over 21 years of age; live in San Francisco; knew the Lane when her keel was laid; I knew her while she was being built; over there 2 or 3 times while being built; think she was built in a good and substantial manner, well timbered and well fastened, and finished over in better style than any vessel Raymond ever built; she was
199 better finished than the ordinary run of vessels in her class; according to the run of vessel I should judge the Lane's value was between 12 & 14 thousand dollars at the time she was built.

The time I saw her was one or two voyages before the collision occurred; and her value was then I should have paid as much then, with the repairs that were put on her, as I would the day she was built.

Cross-examination:

I have never bought a vessel, sold a vessel, or built a vessel; I judge myself as to the value of vessels; I have seen vessels sold and bought, and vessels built also, and on my judgment I go.

CHARLES F. KILDAHL.

Sworn & subscribed before me this 5th October, 1868.

S. NEALL, *U. S. Com'r.*

William M. Hendry, sworn for libellants:

I am over 21 years of age; & reside in San Francisco; am a shipsmith; I have bought and sold vessels in this market and know what the value of vessels are.

200 I know the schooner L. C. Lane; I advanced money on her whilst she was being built; she cost, as near as I could calculate at the time, about $13,500; I can't swear to the exact amount. When I advanced the money to Capt. Lee I went around and paid the greater portion of the bill in company with Capt. Lee. I saw her I think just before she went out on the voyage she was lost. At the time of last voyage she was in good order; she had received considerable addition in the shape of anchors and chain. Take her wear and tear &

what had been put on her, I should judge she was worth about the sum she cost when built. I speak of her value in gold coin.

Cross-examination waived.

WILLIAM M. HENDRY.

Sworn to and subscribed before me this Oct'r 5th, 1868.

S. NEALL, *U. S. Com'r.*

It is stipulated when speaking of the value of the "Lane," it is in gold coin of the United States.

Further testimony adjourned to Friday, Oct. 9th, inst't, at 2 o'clock p. m.

201 District court of the United States for the district of California.

N. C. ERLANDSEN ET AL.
vs.
SCHOONER "OCEAN SPRAY."

Be it remembered that on this 14th day of Oct., A. D. 1868, at my office in the United States court building in the city of San Francisco, personally appeared before me, Chas. W. Grant, a commissioner to take acknowledgment of bail and affidavits, etc., duly appointed by the circuit court of the United States for the district of California, George Kentfield, a witness on the behalf of the claimant in the above-entitled suit.

J. B. Manchester, esq., appeared as proctor for the claimant, and Cutler McAllister, esq., as proctor for the libellant; and, the said witness having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by J. B. Manchester, esq're:

Question. What is your name, age, occupation, and place of residence?

202 Answer. My name is Geo. Kentfield; my age is 38 years and upwards; my occupation is master mariner, and my place of residence, San Francisco; am owner of the "Ocean Spray," and claimant in this action; I knew the schooner L. C. Lane before she was stranded, but never examined her after she was stranded; I went down with J. B. Ford, of Mendocino; I saw that she had no clamp under her beam fourteen inches wide, three inches thick. She had two-inch selling in her. She has three bilge streaks ten inches wide and three inches thick; she was bolted from the inside; bolts from six to eight inches long—what we term blind bolting—were not driven through to the outside; she had one sister kelson four inches thick, twelve inches wide, and forty feet long; have had seven vessels built since '49; am a ship-carpenter by trade. These vessels were all built in California. The smallest was fifty tons, the largest two hundred and twenty-five tons, register; worked three years in Bell & Brown's ship-yard, in New York, before I came here to California; suppose I have owned interests in about a dozen vessels since I came to this State. I never worked on a vessel like the L. C. Lane, and never saw one built like her. In my judgment she was not properly built. No insurance company would take a dollar on her if they knew how she was built.

203 Ques. Would a vessel built as the Lane was built be as valuable as one of the same size properly built?

Ans. No, sir.

Ques. What could a vessel of that size, built as she was built, & rigged and appurtenanced as she was, cost?

Ans. $8,000 in gold coin.

Cross-examination:

Examined her three days after she was stranded; I might have been aboard the first time half an hour; might have been aboard only ten minutes the first time. I looked at the vessel; she was open so that any mechanic could tell at once what she was. I saw that she was a blind. I was aboard several times afterwards; saw her breaking up.

Ques. What do you mean by a blind.

Ans. I mean where a vessel is painted and puttied up on the outside, and you cannot tell what she is until you open her. The only vessel I ever worked on in this country was a scow called the "Sycamore;"

204 that was in '49. The vessels that I have owned an interest in in California are the sloop "America," sloop "Caroline," sloop "Whipple," schooner "Harriet K.," schooner "Two Brothers," schooner "Ocean Spray," brig "George Emery," brig "Judson," brig "J. S. Cabbotts," bark "Palmetto," bark "Hermione," schooner "Dashaway."

Ques. If the L. C. Lane had been properly built, what would have been her value?

Ans. $10,000 in gold coin.

GEORGE KENTFIELD.

Wm. Bell, being duly sworn on behalf of claimant, testified as follows:

My name is Wm. Bell; my age is 46; my occupation is that of shipwright; residence is San Francisco; have been a shipwright about 30 years; am still working at the business; have been engaged in building and repairing vessels since '51.

Ques. Have you heard the description of the build of this vessel by Capt. Kentfield, in his testimony to-day?

205 Ans. I have. Am acquainted with the price of vessels in this port.

Ques. What would a vessel of the size of the L. C. Lane, built as Capt. Kentfield has described her, fully rigged and equipped for sea, be worth in gold coin in this market?

Ans. According to his description I would not like to give over $8,000 for her.

Ques. What would a vessel properly built of pine, of $92\frac{95}{100}$ tons, 90 feet long, 26 feet breadth, and 8 feet deep, fully rigged, equipped for sea, be worth in this market?

Ans. I built vessels last summer, $91\frac{48}{100}$ tons, for $9,500; built in the best manner; as well built as any vessel could be built in the country.

Ques. What was the thickness of the bilge streak in the vessel you built?

Ans. Five streaks, four inches by eight; two streaks of champs, one four by twelve, one four by ten.

Ques. Would such clamps and bilge streaks, as described by Capt. Kentfield, in the Lane, make her a first-class vessel?

206 Ans. No, sir.

Ques. Capt. Kentfield states that she had one sister kelson, four inches thick, twelve inches wide, and forty feet long; would such a kelson be a proper kelson for a No. 1 vessel of that size?

Ans. No, sir; two-inch celling would not be proper for a vessel of that description. Bolts from the inside from 6 to 8 inches in length, not

going through, would not be proper bolting for a vessel of that description.

Cross-examination:

The estimate I have given of the value of this vessel is based entirely on the description given me by Capt. Kentfield.

I know Otto Raymond is a ship-builder; don't know what his reputation is.

WM. BELL.

Lumber S. Allen, being duly sworn, testified as follows:

My name is Lumber S. Allen; my age is 42; my occupation is that of shipwright; residence, Oakland Point; am still engaged in building and repairing vessels in California; have been a shipwright 25 years; am acquainted with the value of vessels; heard the description of the build of the L. C. Lane given by Capt. Kentfield in his testimony to day.

207

Ques. Would a vessel built in that way, in your judgment, be properly built?

Ans. No, sir; I should think it would be too light.

Ques. What would a vessel properly built, $92\frac{95}{100}$ tons, 90 feet long, 26 feet wide, and 8 feet deep, fully rigged and equipped for sea, be worth in this market; or, in other words, what would it cost to build and equip such a vessel?

(It is agreed between the proctors for parties that all the estimates made by all the witnesses in this reference has been made on the basis of gold coin.)

Ans. Probably $10,500; not to exceed that.

Ques. What would a vessel of the size of the Lane, built as described by Capt. Kentfield, fully equipped for sea, be worth in this market; or, in other words, how much would it cost to build and equip her?

Ans. Not over $8,500.

208

Ques. How many vessels have you built in California?

Ans. About 12 or 15. I am building them all the time. Built the dry dock at Oakland. Have built two vessels and one steamer this summer; am preparing to build another one now.

Cross:

Ques. Have you ever worked for Capt. Kentfield?

Ans. I have done one job for Capt. Kentfield—repairing a vessel; have seen the L. C. Lane at the wharf; have never examined her; my estimate of her is based entirely on the description of Capt. Kentfield.

L. S. ALLEN.

James Wilcutt, being duly sworn, testified as follows:

My name is James Wilcutt; age, 37; occupation, that of ship-carpenter; residence, San Francisco; have been working at my trade in this place fifteen years.

I know the schooner L. C. Lane; have worked on her; worked on her some time last winter. From what I saw of her in working on her, the manner in which she was constructed was about the same as other vessels of her size. That portion of the vessel that we worked on was about the same as that in other vessels of her size. The part that we were at work on was about her stern and rail, where she

209

was broken. I should judge, from the way vessels sell now, that she was a schooner of the value of about $10,000 or $11,000.

Cross:

Did not examine this vessel except where we were at work on her; she ought to have one clamp; I should say the clamp ought to be four inches; two-inch celling would not be a No. 1 celling for a vessel of that description; I should say 3 bilge streaks, 3 inches and 10 inches wide, would not be proper for a vessel of that description.

Ques. Would a vessel of that size and description, bolted with bolts 6 or 7 inches long, from the inside, commonly called blind bolting, be considered a No. 1 job.

Ans. That would depend on the thickness of the plank through which they went. If they went through a 2-inch plank I should think them all-sufficient; all the first-class vessels that I have seen here were built in that way—with blind bolts.

210 Ques. Would a two-inch plank be a proper plank for a vessel of that size and description?

Ans. I should say not.

Ques. Would one sister kelson, four inches thick by twelve inches wide, and forty feet long, be a proper kelson for a vessel of that description?

Ans. No, sir.

Ques. Would it not make a considerable difference in the price of this vessel provided she were built in the manner described?

Ans. I should say it would.

Ques. How much difference would it make?

Ans. From $1,500 to $2,000.

Ques. What would be her value, in your judgment, if she were built in the manner described?

Ans. I have stated her value, and I judged of her value from what I had heard of her.

JAMES WILLCUTT.

Chas. Lee, being recalled, testifies:

211 The L. C. Lane was built for me; I was present all the time while she was being constructed; she had one clamp four inches thick; she had eight three-inch bilge streaks; she was bolted through and through and clinched on the inside; she had two sister kelsons; she had a few streaks—four or five, I think—of two-inch ceiling; the balance was three-inch, and up to the clamp it was four-inch; her keel was 18 by 18, and she had kelson on top 12 by 18, I think; her deck-frame was all natural crooks.

Cross:

Am not a shipwright, but I have had vessels built for me. The bilge streaks and ceilings we planned ourselves.

CHARLES LEE.

Geo. D. Damon, being duly sworn, testifies as follows:

My name is Geo. D. Damon; age, 44; occupation, shipwright; residence, San Francisco; have been working at my trade '42; in San Francisco since '52.

I know the schooner L. C. Lane; I could not state the manner of her construction; I made some repairs on her stern; from what I saw her construction was good; I stript the skin off round the stern; saw

212 that she was solid, same as I should build myself. That is all I know of the construction of the vessel. I should think the Lane would fetch in the market now from $11,000 to $12,000; I think last March she was worth more. In the last & here I have seen vessels that were called good and rated well that had two-inch ceiling.

GEORGE D. DAMON.

Testimony closed, and reference adjourned to to-morrow at 10 o'clock a. m., for argument.

THURSDAY, *15th October*, 1868.

Present, C. McAllister, esq., proctor for libellant, and J. B. Manchester, esq., for claimant.

C. McAllister, sworn on behalf of libellant, testified as follows:

Greenbacks or legal-tender currency are now worth in this market 72 cents in coin per dollar in gold.

CUTLER McALLISTER.

Subscribed & sworn to this 15th Oct'r, 1868, before me.

GEO. E. WHITNEY, *Com'r, &c.*

(Endorsed:) Filed 16th October, 1868.

GEO. E. WHITNEY, *Clerk.*

213

214 *Exceptions to commissioner's report.*

In the United States district court, district of California.—In admiralty

N. C. ERLANDSEN ET AL. *vs.* SCHOONER "OCEAN SPRAY," HER TACKLE, &c. } Exceptions to commissioner's report by the claimants.

The claimant herein excepts to the commissioner's report made and filed in this cause, under the order of this court, on the 16th day of October, 1868.

First. Because the commissioner erred in reporting the value of the schooner "L. C. Lane," her tackle, apparel, and furniture, at $12,000 in U. S. gold coin, as the evidence before him does not make her value to exceed the sum of $10,000 in U. S. gold coin.

Second. Because the commissioner erred in reporting the value of the provisions & clothing lost, belonging to libellants, at $125, or any other sum, as the libel contained no allegation in that regard.

Third. Because the commissioner erred in reporting the sum of $280, the value of the cargo, or the damage thereto, laden on board
215 the "L. C. Lane," as the evidence shows that said cargo did not belong to libellants.

Fourth. Because the commissioner erred in reporting the loss sustained by libellants by reason of their inability to fulfil a charter under which the "L. C. Lane" was at the time of collision, at the sum of $7,200 in U. S. gold coin, or at any other sum whatever, as the claimant is not liable for any such loss or damages.

Dated San Francisco, October 19th, 1868.

J. B. MANCHESTER,
Proctor for Claimant.

Service of a copy of the within exceptions is hereby admitted, October 19th, 1868.

H. & C. McALLISTER. *for Lib'lts.*

(Endorsed:) Filed Oct'r 19th, 1868.

GEO. E. WHITNEY, *Clerk*,
By S. NEALL, *D. C.*

216 *Stipulation to allow* $370 00 *for sale of wreck.*

U. S. district court, district of California.—In admiralty.

N. C. ERLANDSEN ET AL.
vs.
SCHOONER "OCEAN SPRAY," &c.

It is hereby stipulated that the sum of three hundred and seventy ($370 00) dollars in U. S. gold coin, be deducted from the value of the schooner "L. C. Lane," her tackle, apparel, and furniture, that being the sum for which the libellants sold the wreck of said vessel after the collision.

San Francisco, October 17th, 1868.

H. & C. McALLISTER,
For Lib'lts.
J. B. MANCHESTER,
Proctor for Claimants.

(Endorsed:) Filed Oct'r 19th, 1868.

GEO. E. WHITNEY, *Clerk*,
By S. NEALL, *D. C.*

217

218 *Order amending libel.*

At a stated term of the district court of the United States, district of California, held in the city of San Francisco, on Monday, October 19th, A. D. 1868:

Present, Hon. Ogden Hoffman, district judge.

N. C. ERLANDSEN ET AL.
vs.
THE SCH'R "OCEAN SPRAY," ETC.

And now, at this day, the argument of the exceptions to the commissioner herein is heard and submitted, and on motion of proctor for libellants it is ordered that the libel herein be amended by inserting Charles J. Lee as a libellant in the place and stead of Wm. M. Hendry.

219

220 *Amended libel.*

In the district court of the United States in and for the district of California.

NICOLAS C. ERLANDSEN AND CHAS. J. LEE, libellants,
vs.
THE SCHOONER "OCEAN SPRAY," HER TACKLE, apparel, and furniture, and George Kentfield, master and owner.

To the Honorable Ogden Hoffman, judge of the district court of the United States for the district of California:

The libel of Nicolas C. Erlandsen and Charles J. Lee, both of the city and county of San Francisco, State of California, against the schooner "Ocean Spray," her tackle, apparel, and furniture, and against George Kentfield, master and owner of said schooner "Ocean Spray," and all persons lawfully intervening for their interest in said schooner in a cause of collision, civil and maritime, alleges as follows:

First. That your libellants, before and at the time of the collision hereinafter in the third article mentioned, were the owners and proprietors of a certain schooner called the "L. C. Lane," with her masts,
221 tackle, apparel, furniture, and boats, which said schooner libellants used in the transportation of freight, and which, at the time of said collision, libellants were using in the carrying of lumber from ports in Puget Sound and on the northern coast of California to San Francisco.

Second. That on the 27th day of February, A. D. 1868, said schooner "L. C. Lane," under the charge and direction of libellant Nicolas C. Erlandsen, as master, left the port of San Francisco fully and properly equipped, provisioned, officered, and manned for a voyage to the port of Mendocino, California.

Third. That on the 4th day of March, A. D. 1868, said schooner "L. C. Lane" arrived off the said port of Mendocino, but being signalled from the shore that it was dangerous to enter said port at that time, the master of said "L. C. Lane" bore off for Little River Harbor, distant some three miles; that at this time said schooner "Ocean Spray," George Kentfield master and owner, was from a mile to a mile and a half distant, bearing off the port quarter of said "L. C. Lane;" that as said "L. C. Lane" was entering said Little River Harbor, being on the inside of the reef, close hauled on the wind, the said "Ocean Spray" overtook her, (said L. C. Lane,) said "Ocean Spray" being outside of the
222 reef and sailing free.

That said schooner "Ocean Spray" attempted with a free wind to cut across said reef, and get into said harbor in advance of said "L. C. Lane;" and that at that time said "L. C. Lane" was sailing on the wind close hauled, having a ledge of rocks to leeward of her so that she was unable to pay off to leeward.

That in attempting to cut across said reefs, and to get in advance of said "L. C. Lane," said "Ocean Spray" was so carelessly and negligently handled by her master and officer, that she ran into said "L. C. Lane," striking said "L. C. Lane" on her port side in front of her main chains and cutting her, said "L. C. Lane," down to the water's edge; that said "Ocean Spray" then twice surged against said "L. C. Lane," doing much more damage to said "L. C. Lane;" that said L. C. Lane then

became unmanageable and drifted upon the rocks, leaking so fast that her said master, his officers, and crew, were unable, despite their exertions, to keep her afloat, and they were forced to attempt to run her for the nearest beach; but that the water gained upon them so rapidly that said "L. C. Lane" sank before they could get her up on the beach and became a total wreck.

Fourth. That said "L. C. Lane" was so run foul of and destroyed
223 by the wilful negligence and carelessness of said George Kentfield, the master and owner, and of the officers of said "Ocean Spray," and without any fault upon the part of the master or the officers, or any of them, or crew, or any of them, of said "L. C. Lane;" and that the damage occasioned to said libellants in the destruction of said schooner "L. C. Lane," by said negligence and carelessness, is the sum of twenty thousand dollars.

Fifth. That the said schooner "Ocean Spray" is now lying in the port of San Francisco, and within the jurisdiction of this honorable court.

Sixth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore libellants pray that process in due form of law, according to the cause of this honorable court, in cases of admiralty and maritime jurisdiction, may issue against the said schooner "Ocean Spray," her tackle, apparel, and furniture, and that the said George Kentfield, the master and owner of said schooner, and all persons claiming any right, title, or interest in the said schooner "Ocean Spray," may be cited to appear and answer upon oath all and singular the matters afore-
224 said, and that this honorable court would be pleased to decree the payment of the damages as aforesaid, and that the said schooner "Ocean Spray" may be condemned and sold to pay the same, and that the libellants may have judgment against said George Kentfield, and such other and further relief as in law and justice they may be entitled to receive.

N. C. ERLANDSEN.

Sworn to this 20th day of Oct'r, A. D. 1868, before me.
S. NEALL, *U. S. Com'r.*

(Endorsed:) Filed Oct. 20, 1868.
GEO. E. WHITNEY, *Clerk*,
By S. NEALL, *D. C.*

225 *Decree.*

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Tuesday, the twentieth day of October, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Ogden Hoffman, district judge.

N. C. ERLANDSEN AND CHARLES J. LEE, LIBELLANTS,
vs.
THE SCHOONER "OCEAN SPRAY," HER TACKLE, APPAREL, AND FURNITURE, AND GEORGE KENTFIELD, MASTER AND OWNER. } Decree.

On reading and filing the report of George E. Whitney, referee, to whom the above matter was referred, and on motion of H. & C. McAllis-

ter, proctors for libellants, it is ordered that the said report be confirmed as to the amount of seventeen thousand five hundred & thirteen $\frac{89}{100}$ ($17,513 $\frac{89}{100}$) dollars, therein reported to be due to libellants, for the damages demanded in the libel, and that George Kentfield, mas-
226 ter and owner of said schooner "Ocean Spray," pay to the libellants in this action the amount so reported due to them, together with their costs to be taxed.

And on like motion it is ordered that a summary judgment be, and the same is hereby, entered against the said George Kentfield for aforesaid amount and costs, and against John Kentfield and L. B. Mastick, sureties on the bond heretofore given and filed herein for the release of said schooner "Ocean Spray," for the sum of thirteen thousand five hundred dollars, the amount of said bond, and that libellants have execution to satisfy this decree.

OGDEN HOFFMAN,
Dist. Judge.

(Endorsed:) Filed & ent. Oct. 20, 1868.

GEO. E. WHITNEY,
By S. NEALL.

227 *Stipulation in regard to appeal.*

United States district court, district of California.

N. C. ERLANDSEN ET AL.
vs.
SCHOONER "OCEAN SPRAY," &c.

Whereas the order has been entered herein giving claimant but three days more in which to file his brief; and whereas it is agreed that claimant may have ten days from date in which to file his brief herein, in consideration whereof claimant hereby stipulates and agrees, that in consideration of said time, should a decree be entered herein against him, and should he desire to appeal therefrom, that he will perfect his appeal within five days after a decree is entered herein, and try said cause at the October term of the circuit court for this district, should the clerk be able to have the transcript filed in said court in time for said trial.

Dated San Francisco, Sept. 10, 1868.

H. & C. MCALLISTER,
Proctors for Lib'lts.
J. B. MANCHESTER,
Proctor for Claimants.

(Endorsed:) Filed Oct. 20, 1868.

GEO. E. WHITNEY, *Clerk*,
By H. F. GARDNER, *D. C.*

228 At a stated term of the district court of the United States, district of California, held in the city of San Francisco, on Thursday, October 22nd, 1868:

Present, Hon. Ogden Hoffman, district judge.

N. C. ERLANDSEN ET AL.
vs.
SCHOONER "OCEAN SPRAY," ETC.

And now, at this day, the exceptions filed by defendant to the report

of the referee having been brought on for hearing, and argued by the proctors for the respective parties, and due deliberation being had in the premises, it is ordered that the first and second exceptions to said report be overruled, and the third and fourth exception be sustained.

229 *Notice of appeal.*

U. S. district court, district of California.—In admiralty.

N. C. ERLANDSEN ET AL.
vs.
SCHOONER "OCEAN SPRAY," &c., AND GEORGE Kentfield, master and owner thereof.

The claimant and defendant intends to appeal from the final decree of the court in this cause.

Dated October 31st, 1868.

E. B. MASTICK & J. B. MANCHESTER,
Proctors for Claimant and Defendant.

To GEORGE E. WHITNEY, Esq're,
Clerk of said court.

Service of a copy of the within notice of appeal is hereby admitted, October 31st, 1868.

(Endorsed:) Filed Nov'r 2, 1868.

GEO. E. WHITNEY, *Clerk*,
By H. F. LARDNER, *D. C.*

230 *Stipulation.*

U. S. district court, district of California.

N. C. ERLANDSEN ET AL.
vs.
SCH'R "OCEAN SPRAY," &c.

It is hereby stipulated and agreed that claimant may have until Monday, Nov. 2nd, 1868, in which to perfect his appeal to the U. S. circuit court, and that his sureties shall justify before the clerk of this court on Monday, Nov'r 2nd, 1868, at 2 o'clock p. m.

Oct'r 28th, 1868.

H. & C. MCALLISTER,
Proctor for Cl'm'ts.
E. B. MASTICK, *Proctor.*

(Endorsed:) Filed Nov'r 2nd, 1868.

GEO. E. WHITNEY, *Clerk*,
By H. F. LARDNER, *D. C.*

231 *Certificate of clerk of dist. court that appeal has been perfected.*

In the district court of the United States for the district of California.

SCH. "OCEAN SPRAY," AND GEORGE KENTfield, master and owner thereof, appellants,
vs.
N. C. ERLANDSEN ET AL., APPELLEES.
Certificate of appeal.

I, George E. Whitney, clerk of the U. S. circuit court for the district

of California, and ex officio clerk of the U. S. district court for said district, do hereby certify that the claimant and appellant above mentioned have perfected their appeal in said cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said district court this 3d day of November, A. D. 1868.

[SEAL.] GEO. E. WHITNEY, *Clerk*,
By CHAS. W. GRANT, *Dep'y*.

(Endorsed:) Filed Nov. 3, 1868, in circuit court.
GEO. E. WHITNEY, *Clerk*,
By C. W. GRANT, *Dep'y*.

232 At a stated term of the circuit court of the United States for the district of California, held, pursuant to adjournment, at San Francisco, on Tuesday, the 15th day of June, 1869:

Present, Hon. Stephen J. Field, judge.

(Title of cause.)

This cause coming on regularly this day for hearing on appeal [on appeal] from the district court, W. W. Cope, esq., appearing as advocate for the appellants and claimants, and C. McAllister, esq., for the libellants and appellees, claimants read in evidence the deposition of T. H. Griffiths; and the arguments of the respective advocates having been heard, it is ordered that the cause be submitted to the court for consideration and decision.

At a stated term of the circuit court of the United States, held, pursuant to adjournment, at San Francisco, on Wednesday, the 30th day of June, 1869:

Present, Hon. Stephen J. Field, judge.

(Title of cause.)

This cause having been heretofore argued and submitted to the court, and due consideration having been thereon had, it is this day ordered that the decree of the district court heretofore rendered
233 herein, be, and the same is hereby, reversed, and that a new decree be entered herein in favor of libellants for the sum of ($10,657$\frac{88}{100}$) ten thousand six hundred and fifty-seven & $\frac{88}{100}$ dollars, payable in gold and silver coin of the United States.

234 *Deposition of Thomas H. Griffiths.*

In the circuit court of the United States, district of California.

N. C. ERLANDSEN ET AL., LIBELLANTS,
vs.
SCHOONER "OCEAN SPRAY," ETC., DEFENDANT.

Be it remembered that on this 29th day of January, A. D. 1869, at the city and county of San Francisco, before me, James G. Carson, a notary public in and for said city and county, duly authorized to take depositions, etc., etc., personally appeared Thomas H. Griffiths, a witness produced on behalf of the defendant in the above-entitled cause, now pending in the circuit court of the district aforesaid, who, being by me first duly sworn, testified as follows, (deposition taken at the office

of McAllisters and Bergen, Clay street, pursuant to stipulation of the parties hereto annexed, and at the time and place therein mentioned, Cutler McAllister, esq., appearing for libellants, and E. B. Mastick, esq., appearing for defendant:)

It is stipulated by the counsel for the respective parties that
235 this deposition be taken subject to all legal objections, except as to the manner of taking the same.

My name is Thomas H. Griffiths; over 21 years of age; I reside in San Francisco; am master of a coasting schooner. I am without family and live in the ship. I know Erlandsen & Lee, owners of sch'r "L. C. Lane."

After the wreck of the Lane, some time after, during the middle of the summer of 1868, I had a conversation with Erlandsen in regard to the wreck of the vessel; he advised me to buy Lee's one-third of the interest in the wreck. I asked him how much he wanted; he said about fifteen hundred dollars. I told him I would not give him one thousand dollars. He said he believed he was offered twelve hundred dollars for it by a man, who was working in Little River. That was all that occured.

I understood there was some agreement about building a new hull and using all about the wreck that could be used, and the Little River Company to take one-third, Erlandsen one-third, and Lee one-third, and Erlandsen said if they carried out that agreement, Lee's
236 share would be worth $1,500. I believe I understood from Erlandsen that the new hull and everything all finished was to be built for $6,000. I mean the hull alone all finished without the masts or rigging; they owned the rigging and masts together before that in the wreck of the "Lane."

Quest. Was the new vessel to be ready for sea, or merely the hull finished?

Answer. I don't know about the spars and rigging being included in that sum.

Quest. How near complete was the hull at the time of this conversation?

Ans. They had not commenced it, but had got out some of the timber.

Quest. Was the hull afterwards completed by this company?

Ans. Yes, sir; it was. I don't know whether Erlandsen and Lee own anything in her now, and don't know that they ever did, except from what Erlandsen told me, as I have stated above. I never had any other conversation with them.

T. H. GRIFFITHS.

237 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, James G. Carson, a notary public in and for the said city and county, State and district of California, hereby certify that the witness Thomas H. Griffiths, named in the foregoing deposition, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth; that said deposition was reduced to writing by me, and carefully read to said witness, and, being corrected in every particular desired by him, was subscribed by said witness in my presence.

In witness whereof, I have hereunto set my hand and affixed my official seal this 29th day of January, A. D. 1869.

[SEAL.] JAMES G. CARSON, *Notary Public.*

(Endorsed:) Filed June 15th, 1869.

GEO. E. WHITNEY, *Clerk*,
By C. W. GRANT, *Deputy Clerk*.

238 *Decree.*

At a stated term of the circuit court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Thursday, the first day of July, in the year of our Lord one thousand eight hundred and sixty-nine:

Present, the Honorable Stephen J. Field, judge.

SCHOONER "OCEAN SPRAY," &c.—GEORGE KENTfield, claimant & appellant,
vs.
N. C. ERLANDSEN ET AL., LIBELLANTS AND APpellees.

This cause having been brought on for hearing, on appeal from the district court of the United States for the district of California, upon the transcript on file herein and the proofs taken before this court, and said transcript and proofs having been duly read and examined, and the arguments of the advocates for the respective parties heard;

239 now, at this day, it is ordered, pronounced, and decreed that N. C. Erlandsen and Charles J. Lee, libellants and appellees herein, do have and recover of George Kentfield, claimant and appellant, the sum of ten thousand six hundred and fifty-seven $\frac{88}{100}$ dollars in gold and silver coin of the United States, and the costs taxed in the court below, at four hundred and ten $\frac{10}{100}$ dollars.

And it is further ordered, pronounced, and decreed that a summary judgment be entered against said George Kentfield, appellant, John Kentfield and L. B. Mastick, sureties on the appeal on file herein for said amounts, payable in gold and silver coin of the United States, and that libellants and appellees do have execution therefor in said gold and silver coin.

FIELD, *J.*

(Endorsed:) Filed July 1, 1869.

GEO. E. WHITNEY, *Clerk*,
By C. W. GRANT, *Dep'y*.

240 *Order allowing appeal.*

At a stated term of the circuit court of the United States for the district of California, held at San Francisco, on Friday, the 2d day of July, 1869:

Present, Hon. Stephen J. Field, judge.

(Title of cause.)

On motion of the proctor for claimant, it is ordered that an appeal to the Supreme Court of the United States from the decree in this cause made and rendered by this court on the first day of July, 1869, at the present term thereof, be, and the same is hereby, granted and allowed.

241 *Stipulation.*

In the circuit court of the United States for the district of California.

THE SCHOONER "OCEAN SPRAY," AND GEORGE Kentfield, claimant and appellant,
vs.
NICHOLAS C. ERLANDSEN ET AL., LIBELLANTS and appellees.

An appeal having been this day granted and allowed herein to the Supreme Court of the United States, it is hereby stipulated that the evidence, maps, and depositions in the cause now on file in the office of the clerk of the said circuit court shall be taken as, and constitute, the statement of testimony to be used in the said Supreme Court; and it is further stipulated that a copy of said appeal and of the order granting and allowing the same has been duly lodged and deposited in the office of the said clerk for the appellees, their counsel, and proctors, and that any other or further deposit or service of a copy of said appeal and order be, and the same is hereby, waived.

San Francisco, July 2d, 1869.

H. & C. MCALLISTER,
Proctors for Lib'l'ts and Appellees.

242 WILSON AND CRITTENDEN,
Proctors for Appellant.

(Endorsed:) Filed July 9th, 1869.

GEO. E. WHITNEY, *Clerk*,
By H. F. LARDNER, *Dep'y.*

I, George E. Whitney, clerk of the circuit court of the United States for the district of California, do hereby certify that the foregoing two hundred and forty-two pages of writing are a full and true transcript of the record and proceedings of said circuit court, in the suit of the schooner "Ocean Spray," her tackle, &c.—George Kentfield, claimant and appellant—against N. C. Erlandson & others, libellants and appellees, on appeal to the Supreme Court of the United States. And I further certify that a bond on appeal has been duly executed, approved, and filed in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, at San Francisco, in said district, this thirteenth day of October, A. D. 1869, and of the independence of the United States the ninety-fourth.

[SEAL.] GEO. E. WHITNEY, *Clerk.*

No.

IN THE SUPREME COURT

OF THE

UNITED STATES.

THE SCHOONER OCEAN SPRAY, ET
GEORGE KENTFIELD, CLAIMANT,
Appellant

VS.

N. C. ERLANDSEN, ET AL.

Brief of Appellant.

THOMAS T. CRITTENDEN,
Of Counsel.

W. W. COPE,
Attorney for Appell

SAN FRANCISCO:
EXCELSIOR PRESS, BACON & COMPANY, PRINTERS,
No. 536 Clay Street, just below Montgomery.
1870.

IN THE SUPREME COURT

OF THE

UNITED STATES.

THE SCHOONER OCEAN SPRAY, ETC., GEORGE KENTFIELD, CLAIMANT, Appellant. *vs.* N. C. ERLANDSEN, ET AL.	No.

Brief of Appellant.

This is an appeal from a decree of the Circuit Court for the District of California, in a case of collision.

The libel sets forth that on the 27th of February, 1868, the schooner L. C. Lane left the port of San Francisco for a voyage to the port of Mendocino, California; that on the morning of the 4th of March, she arrived off the latter port, but being signalled from the shore that it was dangerous to enter, she bore away for Little River Harbor, dis-

tant some three miles; that the schooner Ocean Spray was then a mile or a mile and a half from the Lane, bearing off her port quarter; that as the Lane was entering Little River Harbor, being on the inside of the reef, close hauled on the wind, she was overtaken by the Spray, the latter being on the outside of the reef, and sailing free; that the Spray attempted to cut across the reef, and get into the Harbor in advance of the Lane, and that in making this attempt, she ran into the Lane, and caused her to sink; that the Lane was without fault, and that she was so run into and sunk by the willful negligence and carelessness of the officers of the Spray.

The answer admits the collision, but denies that it occurred in the manner stated in the libel, alleging that it was occasioned by the careless, negligent, unskillful, inattentive, and reckless navigation of the Lane, by her officers and crew.

In presenting the case, we labor under the disadvantage of having two decisions against us; and we are sensible of the difficulties of our position arising from this circumstance. They are mere difficulties, however, and we propose to surmount them by showing beyond controversy that the case was improperly decided. We do not ask a reversal as the result of a doubt, but as a necessary conclusion from the law and the facts.

As a starting point in the argument, we ask particular attention to the opinion delivered by

the learned Judge of the District Court. By comparing that opinion with the evidence as disclosed by the record, it will be seen that the grounds of the decision originated in a misapprehension of material facts. It will also be seen that the evidence chiefly relied on by the Judge was unworthy of attention; and that in consequence of the erroneous view taken of the facts, certain well established principles, clearly applicable to the case, were entirely ignored. In the Circuit Court, no opinion was delivered; and it is fair to presume that the grounds of the decision were the same as in the District Court. Indeed, there were no other grounds on which the same conclusion could be arrived at.

In referring to the opinion, our object is to obtain a determination strictly on the merits, uninfluenced by the decisions below; and the Court will find in the opinion, taken in connection with the evidence, sufficient reasons for such a determination. As we proceed with the argument, we shall take occasion to notice the opinion again and contrast it with the evidence.

The testimony exhibits numerous discrepancies as to times, distances, and the position and management of the vessels as they approached the point of collision. But such discrepancies are so common, especially as to times and distances, that the Courts are not inclined to pay much attention to the statements of witnesses in these particulars.

(1 Parsons on Shipping and Admiralty, 537, 538; The Vanderbilt, Abbot's Adm., 361; The Emily, Olcott's Adm., 132; and other cases cited by Parsons.)

As to the points on which the decision must depend, however, there is no conflict in the testimony; and in determining the case, it will not be necessary to resolve doubts, or to balance contradictory evidence.

The stress of the argument on the part of the libellants will be, that the Lane was ahead, and that the Spray was bound to keep away from her. As a general rule, we admit that when two vessels are proceeding in the same direction, one being ahead of the other, the vessel behind, if she wishes to pass, must take the necessary precautions to avoid a collision, and failing to do so, will be responsible for the consequences. But the duty thus imposed is not absolute and unconditional; and conceding that the Lane was ahead, it does not follow that the Spray was in fault.

It is clearly proved that the movements of the Lane were such as to mislead the officers of the Spray as to her intention to enter Little River Harbor. On this point, the evidence is direct and conclusive; and as the right to enter belonged equally to both vessels, it was the duty of the Lane, if she desired to enter in advance of the Spray, to abstain from any indications calculated to create an erroneous impression as to what she

intended to do. Her movements indicated that she was not going in, and the Spray was under no obligation to wait for further developments as to her intention. The Spray did precisely what any other vessel would have done under the same circumstances. She acted upon the indications before her; and the collision was caused by a reckless attempt subsequently made on the part of the Lane to get in ahead. The conduct of the Lane in making this attempt was not only negligent, but characterized by a disregard of consequences for which there is no excuse or palliation. It originated in the idea that she could do as she pleased, without reference to the Spray, and that whether the Spray was misled or not, the responsibility rested entirely on her.

If we are correct in our view of the facts, the rules of law to be applied are perfectly well settled. The plaintiff in a case of collision must prove both care on his own part and want of it in the defendant; and if it appear that a fault was committed from which the collision may have resulted, the burden is on the vessel committing it to prove that the collision was not caused by this fault. "Nor is it enough," says a learned author, "to prove show that the collision could not have been vented at the moment, if it might have been of the previous precautions." (1 Parsons on Shipping and Admiralty, 528, 529.)

These rules have been laid down in cases where the vessels, according to the testimony, were a mile or more apart, the Spray bearing off the

variety of adjudged cases. Thus, a failure to carry a suitable light, or to have a competent look-out, where ordinary prudence requires one, has been held to be a fault sufficient to render the vessel responsible, unless it be proved that the collision resulted from a different cause. (The Emily, Olcott's Adm., 132; *Waring* vs. *Clarke*, 5 How. 441, 465; *Cushing* vs. *The John Fraser*, 21 How. 184.)

In the *New York Steamship Company* vs. *Calderwood*, (19 How. 241) a collision took place between a sailing vessel and a steamer, the sailing vessel being without a licensed pilot, and not exhibiting an efficient light. The Court came to the conclusion upon the evidence that these circumstances were not the cause of the collision, but said: "That the case may not be misunderstood, we assert that the ruling principle of the Court is, that an obligation rests upon all vessels found in the avenues of commerce to employ active diligence to avoid collisions; and that no inference can be drawn from the fact that a vessel is not condemned for an omission of certain precautionary measures in one case, that another vessel will be excused under other circumstances for an omission of the same description."

In the case of The Sylph, (2 Spinks Adm. 75) one light of a steamer called the Meteor had gone out, and she was consequently taken for a vessel at anchor. Dr. Lushington said: "Though the

Meteor may not be in any degree to blame for the light going out—for I apprehend that lights will go out at sea as well as elsewhere; it might be an accident, yet it is the same as regards the other party as if it had arisen from negligence—she must suffer the consequences of the light going out, if she misled the Sylph."

Other cases will be noticed by us in the course of the argument; but the principles involved are so well established, and so familiar to the Court, it is unnecessary to cite authorities to any considerable extent. If we can show the Court that we are correct as to the facts, the decision cannot be a matter of doubt; and we now proceed to examine the evidence.

On the day of the collision the wind was strong from the northwest, and the sea rough. The two vessels were in sight of and about five miles from each other early in the morning, the Lane heading for Mendocino, and the Spray for Little River. The Spray was in a northwest direction from the Lane, and some distance north of Mendocino, which is about three miles north of Little River. The course of the Spray was southeast, and that of the Lane east or northeast. The Spray kept her course without deviation, and when the Lane had arrived within three-fourths of a mile of the entrance to Mendocino harbor, the vessels, according to the allegations of the libel, were a mile or a mile and a half apart, the Spray bearing off the

port quarter of the Lane. At this point the Lane was signalled from the shore that it was dangerous to enter, and she consequently changed her course, and bore away for Little River. The harbor of Little River is very small, being described by some of the witnesses as a mere hole or bight in the coast. The entrance is not more than three or four hundred feet in width, and on the north and south there are reefs extending several hundred feet from the shore.

After leaving Mendocino, and arriving in the vicinity of Little River, the Lane again changed her course; and this brings us to the principal facts in the case. We have already stated that the movements of the Lane were such as to mislead the Spray; and we propose, in the first place, to refer to the evidence on this point.

Captain Erlandsen—master of the Lane, and one of the libellants—testifies that just before getting to the northwest point of Little River harbor, he was compelled to jibe his mainsail, and that in doing so he carried away his main sheet; that he lowered his mainsail to reeve a new sheet, and headed his vessel off shore; that he was too close in to get around the northwest point of the harbor; that he stood off about a mile and a half, and then lowered his foresail to wear ship. (Rec. fol. 30.)

The same facts appear in the testimony of other witnesses; but no controversy can arise on the

subject, and we deem it unnecessary to examine the testimony.

As to the effect of these movements on the Spray, the evidence is direct and positive. They took place after the Lane had arrived almost at the entrance to the harbor; and as the Spray could only see them without understanding the reasons for them, she very naturally concluded that the Lane was not going in. That she was justified in coming to this conclusion, is clearly established; and the Judge of the District Court admits it in his opinion. A mere glance at the evidence will be sufficient.

Captain Kentfield—master of the Spray—testifies that he saw the Lane when she left Mendocino, and then supposed she was going to Little River; that he saw her again after she lowered her mainsail, and came to the conclusion she intended to luff, and see him go in; that lowering the mainsail indicated that she was not going in, and that lowering the foresail made him certain of the fact; that no man on the coast would say there was the least reason, after she lowered her foresail, to suppose she was going in. (Rec. fols. 38–42.)

Henry M. Hayward—mate of the Spray—testifies substantially to the same facts; and the witnesses all agree that the indications were such as to justify the conclusion arrived at. (Rec. fols. 43, 48, 49, 55, 56, 83, 84.)

The District Judge gives his view of the matter

in the following language: "On the part of the respondents, it is urged that the action of the Lane in standing off shore and lowering her main-sail indicated to the master of the Spray that she was not going in, and gave him the right to treat her as having abandoned the right to do so, which, being in advance, she would otherwise have had. It is true, the conclusion at which the master of the Spray arrived was natural, and justified by the appearances."

He proceeds to say, however, that the mistake was discovered by the master of the Spray in time to avoid the collision; and this is the ground on which the Spray was held to have been in fault.

In examining the evidence on this point, we shall insist that the burden of proof is on the Lane. The Spray was misled by her movements, and under the circumstances, these movements must be imputed to her as a fault. It is no answer to say that they were caused by the necessities of her position; for the effect upon the Spray was the same as if they had originated in a deliberate purpose to deceive. If the Spray was misled, the Lane must suffer the consequences, unless it clearly appear that the collision resulted from a different cause. The principle is the same as in the case of the Sylph, decided by Dr. Lushington.

The Master of the Lane testifies that after standing off about a mile and a half, the Lane wore round, and headed directly in for Little River,

and that he then hoisted his mainsail; that the Spray was a mile and a half or more to the northwest, and that the collision occurred ten or fifteen minutes after the mainsail was hoisted; that the Lane was on the wind at the time of the collision. On cross-examination, he testifies that it was "all of ten minutes" from the time he wore ship until the collision, and that the collision took place about eight minutes after the mainsail was up; that he noticed the Spray about two or three minutes before the collision, and that three or four minutes before it was not too late for her to avoid the collision by changing her course. (Rec. fols. 30, 33.)

The Mate of the Lane testifies that the Spray was about two miles to windward when the Lane hoisted her mainsail and stood in for Little River, and that the collision occurred about ten minutes from that time; that after the Lane wore round, she had the wind on the port quarter, and that when she got to the reef, her mainsheet was hauled in, and she was brought on the wind to enter the harbor; that at the time the mainsail was hoisted, the Spray was not nearer the harbor than the Lane, and that the latter was a mile or two off. (Rec. fols. 34–36.)

James McClellan—a passenger on the Lane—testifies that when the mainsail was hoisted, the Spray was a mile or a mile and a half off, about on a line with the Lane, or perhaps a little nearer

land, and that it was ten or thirteen minutes until the collision. (Rec. fol. 37.)

J. M. Grimmer—seaman on the Spray, but a witness for libellants—testifies that when the Lane commenced to make sail and stand in shore, the Spray was distant about a mile and a half, and that the collision occurred in about seven or eight minutes, "a very short time;" that while the Lane was standing in, she had a free wind, but that he supposes she was pretty close on the wind at the time of the collision; that she was to the leeward of the Spray all the time, but how far to the leeward, or how far off shore, he cannot say; that the Spray might have avoided the collision after the Lane lowered her foresail, but that there would have been great danger of taking both masts out of her; that she was close to the breakers when the Lane rounded to, and that he thinks the main sail of the Lane was not entirely up when the vessels came together. (Rec. fols. 51–58.)

The Master of the Spray testifies that he saw the Lane when she hoisted her mainsail; that this was from four to six minutes before the collision and that the Lane was about a mile off; that the Spray was astern of the Lane, and that both vessels were heading about the same down the coast, before the sea; that he looked again in about a minute, and that the Lane had her peak down, and was still heading in the same direction; that the Spray was just in the ground swell, and

that the collision occurred about three minutes afterwards; that a few seconds before the collision the Mate called out that the Lane was hoisting her peak, and coming in, and that the Spray was then in the breakers. (Rec. fols. 38–42.)

The Mate of the Spray testifies that when he first saw the Lane after she wore round, she was headed down the coast about the same as the Spray, and running with her peak down; that she was then three or four hundred feet ahead of the Spray, and three or four points on her starboard bow; that a minute afterwards, he saw the Lane hoist her peak, and that this was the first indication he had that she was going in; that he called out to luff, but that the collision was then inevitable; that when the Lane hoisted her peak, she put down her helm, and luffed right across the bow of the Spray; that her luffing was the sole cause of the collision. (Rec. fols. 43–46.)

Peter Thompson—seaman on the Spray—testifies that when the Lane stood off shore she crossed the track of the Spray, and went outside of her; that when the Lane lowered her foresail the Spray was about a mile or a mile and a half off, and that from the time the Lane changed her course for Little River it was about four or five minutes until the collision; that the Spray could not have avoided the collision after the Lane changed her course, and that the collision was caused by the Lane luffing up on the wind, and a sea taking the

Spray on the quarter; that the Lane had the wind nearly abeam until she luffed up to enter the channel. (Rec. fols. 66, 68, 70, 78.)

Without extending the examination further, it is sufficient to say that the testimony of these witnesses presents fully and fairly the merits of the controversy on this point; and the question is, whether it makes out such a case as the Lane was required to prove, in view of the fact that she misled the Spray. We confidently claim that it does not.

A conclusive objection to it is that it involves an estimate of time, and a calculation of distances, which the witnesses do not pretend to make with certainty, and which, if they did, are so uncertain in their nature that they can only be regarded as matters of speculation and conjecture. When the Master of the Lane informs us that the Spray was about a mile and a half off at the time he wore ship, and that his mainsail was up eight minutes before the collision, we understand him merely as giving his opinion, for he could not have measured the distance, and he does not tell us that he referred to his watch in order to ascertain the time. According to the testimony of other witnesses, the distance and time were much less; but their testimony is also matter of opinion, and could not be accepted with any assurance of its correctness. In the very nature of things, the whole testimony on the subject is unreliable; and

all that can safely be assumed is that the collision occurred within a few minutes after the Lane indicated her intention to go in. Whether it was five or ten minutes, or whether the Spray could have avoided the collision within the time that really elapsed, it is absurd to suppose that any of the witnesses could testify from actual knowledge; and taking the testimony as it is, there is not a tangible circumstance going to show that the collision was not the direct result of the impression made upon the Spray by the movements of the Lane. But even a reasonable doubt on the subject would be fatal to the Lane, for the burden is on her to show by clear and incontestible proofs that the collision was not attributable to that cause. Having misled the Spray under such circumstances that the collision may have resulted from it, the Lane is presumptively in fault; and before she can call upon the Spray to respond in damages, she must relieve herself from this presumption by something more substantial than the mere opinion of witnesses. Besides, the weight of opinion is greatly against her, one of her own witnesses emphatically declaring that the Spray could only avoid the collision by incurring the danger of losing her masts.

In point of fact, the testimony, so far from excusing the Lane, shows her to have been guilty either of gross negligence or willful misconduct. It was no less her duty to avoid the collision than

that of the Spray; and under the circumstances, she was bound to perform this duty to the utmost of her ability. Instead of doing so, however, she proceeded without regard to the Spray, and as a final act, she precipitated the collision by luffing, when a contrary movement would undoubtedly have avoided it. The Mate of the Spray says, "She luffed right across our bow;" and the Mate of the Lane says, "When we got up to the reef, we hauled in mainsheet, and brought her on the wind to go into the harbor." The same movement is also alluded to by Grimmer and Thompson; and the Mate of the Spray arrives at a very reasonable conclusion when he says that "nothing but her luffing caused the collision." We submit that this movement can only be accounted for on the supposition of culpable negligence or intentional wrong. It was not a movement caused by the excitement of the occasion, and excusable as a mistaken effort to escape an impending danger; but a deliberate act, without the slightest reason to justify it It is true, the Master of the Lane says he was not apprehensive of danger until about two minutes before the collision; but if this be so, it proves that he was either incompetent as a commander, or inattentive to the duties of his position. His story is absurd on any other theory, for it is inconceivable that a competent and attentive officer could have been so oblivious as not to have seen the danger for more than two minutes

before it culminated in a disaster. The fact is, the Master of the Lane was impressed with the idea that as the bow of his vessel was a little in advance of that of the Spray, he could do as he pleased, without being responsible for any injurious consequences that might ensue. When asked by the Master of the Spray why he did not jibe his mainsail, he answered that the law was on his side, that he was ahead, and that the Spray was bound to look out for him. (Rec. fol. 39.) His opinion evidently was that the rights belonged exclusively to him, and the duties to the Spray; and he acted strictly in accordance with that opinion. Independent of the fact that the Spray was misled, the Lane could not justify her course; and in view of this fact, it is utterly indefensible, both in law and in morals.

That the Lane could have avoided the collision, if she had chosen to do so, at any time before she luffed, must be admitted. By crossing the track of the Spray, and going outside of her, she obtained a position which enabled her to maneuver without obstruction. On the south and west the ocean was entirely open to her, and she could have kept away with perfect safety, subjecting herself merely to a few moments' delay. The position of the Spray was altogether different; she had the shore in close proximity on one side, and the Lane on the other. It is possible she could have luffed without going ashore, or have jibed without col-

liding with the Lane; but the evidence shows that there was danger in either course, and she was not required to expose herself to this danger. If the Lane expected she would do so, it was a most unreasonable expectation The Spray did precisely what she ought to have done; and she had the right to rely upon the Lane for the adoption of such measures as would secure the safety of both vessels.

There are several other matters which were discussed in the District and Circuit Courts, but they are matters of little consequence in comparison with those we have presented.

It was contended by the counsel for the libellants that the collision was the result of an attempt on the part of the Spray to get in ahead; and as evidence of this, an effort was made to show that she was carrying more sail than was necessary, and that she pursued an improper and unusual course in entering the harbor.

As to the extent of sail carried, the testimony of the witnesses is conflicting. The Master and Mate of the Spray testify that her sail was increased after the Lane commenced to stand out; and the Mate testifies that she had a single-reefed foresail, double-reefed mainsail, and jib. Both of them say that the sail carried was not more than she ought to have had, and that nothing was done with the view of getting in ahead; that as to the Lane, they came to the conclusion that she was

not going in. As this conclusion was authorized by the movements of the Lane, she is not in a position to question the right of the Spray to carry any sail she pleased.

In regard to the course pursued by the Spray, the testimony cannot be relied on with any certainty. The effort was to show that she crossed the reef instead of taking the channel; but evidence on such a point is necessarily conjectural. Captain Scott says: "I thought she was close to the reef, and would strike; she might have been far enough off; never can tell exactly." (Rec., fols. 90, 91.) Peter Thompson says: "We were coming down before the wind; when we got so we could just luff up, we ran into her; could not keep off on account of her being to the leeward of us, crowding us up on the reef, and a sea took us at the same time." (Rec., fol. 76.) Some of the witnesses testify positively that she crossed the reef, but as she did not strike, the inference is that they are mistaken. The evidence is of the same character as that relating to the distance between the vessels, and equally unreliable. In view of the fault clearly fixed upon the Lane, it would be monstrous if she could vindicate herself by such evidence.

In order to establish a motive for the supposed attempt on the part of the Spray to get in ahead, it was shown that the facilities for loading at Little River were very limited, and that vessels were fre-

quently subjected to considerable delay on that account. The argument was, of course, that the Spray wanted a load, and that the fear of detention was sufficient to induce her to take the chances of a collision. Such an argument could only have originated in a profound conviction of the desperate nature of the case, or in the brain of a man who would have acted from such a motive. But the inference drawn is not justified by the evidence, even assuming that the officers of the Spray were capable of the conduct imputed to them. In the first place, they had seen the Lane heading for Mendocino, and the reasonable supposition was that she was bound for that port, and would get her load there, if she wanted one. They had also seen the signal which caused her to leave, and it was natural for them to conclude that in going to Little River, her purpose was temporary, and that she was merely seeking a place of refuge during the rough weather. In the second place, there is no evidence that the Spray wanted a load at Little River; and her officers indignantly deny that they were actuated by the motive charged, or had any desire to get in ahead.

At this point, it is proper for us to refer to certain depositions taken by the libellants at Mendocino and Little River. These depositions were taken *ex parte* without notice, and will be found in the record, commencing on page thirty-six, and ending on page fifty-six. The only importance

attaching to them relates to the testimony of some of the witnesses as to declarations alleged to have been made by the Master of the Spray. He denies that the declarations were ever made, and on examining the evidence, we think the Court will not hesitate to accept his denial. Besides, evidence of declarations is always received with great caution; and in respect to such evidence, a cross-examination is absolutely necessary to afford even a reasonable assurance that the evidence can be relied on. The witness may be honest and truthful, but there are so many things to be taken into account, such as the tone, manner, and other circumstances attending the declaration, as well as the precise words used, it would be very dangerous to act upon his testimony, unless his attention has been particularly directed to these matters. So, he may not have heard the entire declaration, or may remember only a part of what he heard, or may state as serious what was intended as a joke, and so understood. These and other similar considerations are universally recognized; and it is unnecessary for us to elaborate a subject with which the Court is perfectly familiar. It is plain that the depositions are not entitled to any weight. As to the declarations testified to by the Master of the Lane, we have only to say that they were foolish, and could not have been serious.

We now propose to examine the grounds on which the case was decided in the District Court;

these being the only grounds on which a decision could be made in favor of the libellants. We have the highest respect for the learned Judge who presides in that Court; and in order that we may do him no injustice, we quote from his opinion. After stating that the conclusion arrived at by the Master of the Spray as to the intention of the Lane was natural and justified by the appearances, he says: "But his mistake must have been apparent to him the moment the Lane wore round, and stood in for the harbor. * * The account of the occurrence given by Captain Tommeledge, a witness for the claimant, is conclusive as to the merits. He states that when he saw the Lane standing off shore he thought she was not going in, but when he saw her set her mainsail, he knew she was going in. This he says occurred about half an hour before the collision. The Lane was then about two miles from the point of rocks; the Spray about four or five miles off. He adds: 'If I had been coming in as the Spray was, I should have done my best to get in first, and get my load first. If I had missed it and cut him down, I should have had to stand the consequences. The Lane was ahead, and had the first right to go in.' I entirely assent to the correctness of the views of this witness, and think there is no room for doubt that the collision was caused by an attempt on the part of the Spray to cross the track and get ahead of the Lane, when the latter was too far

in advance to allow her to do so. * * During the whole time that the Lane was standing in—half an hour, according to the claimant's own witness—the intention to go in was unmistakable."

We have here a clear statement of the views acted upon by the District Court, and what is of equal consequence, a direct reference to the source of these views. The testimony of Captain Tommeledge has not been alluded to by us, because we desired to examine it in this connection; and because it stands alone in the open avowal of the dangerous and unscrupulous character of the man who gave it. If Captain Tommeledge had been content to give his testimony as a fair and impartial witness, we should treat him accordingly, whatever our opinion might be of the credit due to his statements; but when he admits that for a paltry advantage he would be capable of a wicked and diabolical act, he forfeits all claim to respect. It is obvious that the purpose of this admission was to convict the Master of the Spray of the same act, for the language used is equivalent to saying, "I would have done it, and therefore he did it." The motive is too apparent to be covered up or glossed over, and this admirable witness, whose views are so readily assented to by the Judge, stands forth as a miserable wretch, who is willing to pronounce his own infamy in order to injure another. But he was a witness for the claimant, and this fact is reiterated

in the opinion of the Judge, as if it determined the correctness of his testimony, and placed it entirely beyond impeachment. How he came to be a witness does not appear, except from the character of his testimony, which shows that the claimant must have been acting under a misapprehension. But such things have frequently occurred, and will undoubtedly occur again; and we have no apprehension that any weight will be given to the testimony, for the mere reason that the claimant is so unfortunate as to have summoned the witness.

The whole theory of the Judge rests on this testimony, and he expresses his approval by a strong declaration of its conclusiveness as to the merits. The trifling circumstance that the material facts he deduces from it are not found in the testimony of any other witness, he treats with silent contempt. Even the Master of the Lane, with all his interest in the controversy, states that the vessels were about a mile and a half apart when the Lane wore round, and that the mainsail was up about eight minutes before the collision. In this view, he is corroborated by his Mate; while other witnesses testify that the distance was not so great, and the time shorter. The Judge, however, acting upon the statements of Captain Tommeledge, comes to the conclusion that these witnesses are grossly mistaken; but so far as their testimony is concerned, he simply ignores it. It may be that

his view of the matter is correct; but the probabilities are that the mistake is on his side. If there had been any foundation for saying that the mainsail was up half an hour before the collision, it is reasonable to suppose that the Master of the Lane would have said it; but he does not say it, and the natural inference is that there was no ground for it. It cannot be doubted that his statement of the case goes as far as a decent regard for the truth would permit; and the testimony of Captain Tommeledge must be looked upon as a reckless exaggeration or base perversion of the facts.

But the learned Judge emphasises this testimony in a manner not justified by the statements of the witness. From the nature of the testimony, it is wholly unreliable; but in addition to this, it is expressed in uncertain and indefinite terms. As to the distance of the Lane from the point of rocks at the time she hoisted her mainsail, there are three distinct statements. The first is, that she "was a mile and a half off;" the second is, that she "may have been a mile and a half or two miles;" and the third is, that she "must have been two miles." The distance of the Spray is given in the same indefinite form, being first stated as from three to five miles, and then as four or five miles. So, as to the time at which the mainsail was hoisted, the statement being that it was set about half an hour before the collision.

There is nothing in these statements indicating any definite knowledge on the part of the witness; and they can only be regarded as loose and intangible expressions, utterly unworthy to be received as facts.

Besides, he testifies that he was five or six miles away; and his position could not have afforded the same opportunities for a correct judgment as that of the other witnesses. It is manifest that his testimony, so far as it tends to relieve the Lane from the consequences of having misled the Spray, is entitled to no consideration; and its obvious purpose was to injure the latter vessel. He coolly informs us that he saw no lack of seamanship on the part of the Spray, leaving it to be inferred that she deliberately ran the Lane down in order to get in ahead. To place the matter in the strongest possible light, he confesses that his own conduct would have been the same; and he then says that "the Lane was ahead, and had the first right to go in," this being his view of the law applicable to the case. He not only bears testimony as a witness, but furnishes the legal conclusion to be drawn from it. A more palpable outrage was never attempted in a Court of justice.

It may be said that the opinion of the Judge is not based exclusively on the testimony of this witness; but without the facts taken from his testimony, there is not the slightest ground for the decision. It is impossible that the same conclu-

sion could be arrived at on the testimony of any other witness. It is true, the theory of the Judge is attempted to be maintained by lumping the witnesses together, and stating that they agree as to certain facts. On examination, however, it will be seen that these facts are mere matters of opinion, indefinitely expressed, and necessarily unreliable. As the principal facts on which the witnesses agree, the opinion states that when the Lane wore round, she was a mile and a half or two miles from the entrance to the harbor, and that the Spray was going three or four times as fast as the Lane, while the latter was standing in. On the strength of this, it is assumed that the Spray was distant from the entrance five or six miles; and as a matter of course, she was distant from the Lane three or four miles. But this view is contradicted by the libel itself, and by all the testimony, except that of Captain Tommeledge. The libel states that the Spray was "from a mile to a mile and a half" from the Lane at Mendocino; and as Mendocino is three miles from Little River, it follows that the Spray could only have been from four to four and a half miles from the latter point. It is hardly possible that the distance in either particular was subsequently increased; and the theory of the Judge is completely answered by the allegations of the libel. The testimony has already been referred to, and we will not repeat it.

But the Judge is mistaken in his agreed facts. There is no such agreement as he supposes, either as to the distance of the Lane or the relative speed of the two vessels. The Master of the Lane says he ran out about a mile and a half; and the Mate says, "We were a mile or two off." The other witnesses are still more indefinite, and the result of their testimony is that the distance was not so great. In respect to the speed of the vessels, the Mate of the Lane says that the Spray was going ten miles an hour, and the Lane four or four and a half miles. The same statement is made in regard to the Spray by other witnesses; but some of them say that the Lane was going about a mile and a half or two miles an hour. There is no witness who pretends to testify on the subject from actual knowledge; and the want of agreement in the testimony is only exceeded by its want of reliability.

This concludes our examination of the evidence, except on one point. The Master of the Lane testifies that he stood off shore because his vessel was too close in to get around the northwest point of the harbor. It was necessary for him to give a reason for this movement; but the one given is unsatisfactory and improbable. It is not likely that he permitted his vessel to go so near the shore as to be unable to weather a ledge of rocks extending out only about three hundred feet. (Rec. fol. 41.) If such be the fact, he is a more reckless

and dangerous commander than we have been disposed to regard him. We are satisfied that he was actuated by a different reason; and that the movement was caused by the same apprehension of danger at Little River as at Mendocino. He wished to enter if it were prudent to do so, but of this he was uncertain, and hence his vacillating course. On perceiving, however, that the Spray intended to go in, his pride was appealed to, and he determined not only to proceed, but to get in ahead. This we believe to be the truth of the matter; and his conduct will hardly commend itself to the favorable consideration of the Court.

If there is any evidence on which a doubt can arise as to how the case should be decided, we are unable to discover it The only tangible facts are, that the Spray was misled, and that the Lane could have avoided the collision if she had chosen to do so. The merits of the controversy are centered in these facts, which stand forth as the beacon lights in the testimony. Without them, the whole case would be enveloped in darkness; but with them, it is as plain as any controversy of this nature was ever made. By misleading the Spray, the Lane assumed the responsibility of guarding against all injurious consequences; and it was incumbent on her to show conclusively that her conduct was not the cause of the collision. She seeks to do this by applying the measuring rod, and counting the ticks of the clock; but the

evidence is clearly insufficient to justify a decision on such grounds. The language of Judge Betts, in the case of the Brig Emily, (Olcott, 135) is directly in point. He says: "No satisfactory conclusion can be formed from the estimate of minutes or yards given by witnesses at such a time, and it would be most dangerous to place the decision of important and critical questions on data so equivocal." Other cases to the same effect have been cited by us; but authorities on such a point only establish what the common sense of every intelligent man must readily assent to. The idea of relieving a vessel from the consequences of a fault on evidence of this character, is repugnant to every principle of law and reason; especially in a case like the present, where the testimony is full of discrepancies, and does not even profess to be accurate.

If the decision should be regarded as depending to any extent on the fact that the Lane was ahead, we refer the Court to the case of *Whitridge* vs. *Dill* (23 How. 454). It is there said "that a vessel in advance is not bound to give way, or to give facilities to a vessel in her rear, to enable such vessel to pass; but that the vessel ahead is bound to refrain from any maneuvers calculated to embarrass the latter vessel while attempting to accomplish that object." The same principle applies here. The vessels were approaching a harbor, and the Lane, after misleading the Spray, had

no right to insist on going in ahead, unless she could do so without incurring the danger of a collision.

We have not considered it necessary to refer to the sailing regulations adopted by Congress. The determination of the case does not depend on these regulations, but on the general principles of Admiralty law.

We submit that the decree should be reversed.

W. W. COPE,
Attorney for Appellant.

THOMAS T. CRITTENDEN,
Of Counsel.

IN THE DISTRICT COURT OF THE U. S., DISTRICT OF CALIFORNIA.

N. C. ERLANDSEN ET AL
vs.
THE SCHOONER OCEAN SPRAY, &c.

W. W. COPE,
Attorney for Appellant.

SAN FRANCISCO, *October* 31*st*, 1870.

McALLISTERS & BERGINY,
Attorneys for Respondents.

Waters, Printer, cor. 13th street and Penn. Ave.

IN THE DISTRICT COURT OF THE U. S., DISTRICT OF CALIFORNIA.

N. C. ERLANDSEN ET AL
vs.
THE SCHOONER OCEAN SPRAY, &c.

LIBEL FOR DAMAGES BY COLLISION.

On the morning of the 4th of March last, the schooners "Lane" and "Ocean Spray" were proceeding along the coast; the Lane bound for the Mendocino Harbor, and the Ocean Spray for Little River, a harbor, or as it is not inappropriately called a "hole" in the coast, about three miles further to the southward. The Lane was at this time considerably in advance of the Spray, probably not less than seven or eight miles.

On approaching within about one half a mile of Mendocino Harbor, the master of the Lane observed the flag on shore at half mast, indicating that it would be dangerous to enter the harbor; he thereupon squared away and ran down the coast, intending to go into Little River.

He had accomplished about two-thirds of the distance between the harbors, when he found that he was too far in shore to permit him to weather the end of the ledge of rocks, which forms the northerly side of the entrance to Little River Harbor, he therefore jibed his mainsail and

stood off shore. In doing so his main-sheet parted. He thereupon lowered his main-sail, and hoisted his fore-sail, and stood off under his fore-sail, until he could repair the damage.

As soon as this was effected, he lowered his fore-sail, wore his vessel around, and stood directly in for the harbor, under main-sail and jib.

ALL the witnesses agree that at this time, he was distant from the shore about one mile and-a-half or two miles, directly off the entrance to the harbor.

It is also stated by ALL the witnesses, that the Spray was going three or four times faster than the Lane, when the latter was standing in for the harbor.

As the vessels at these different rates of speed reached a common point of collision which was distant a mile and a-half from the Lane, when she wore around and headed for the harbor, it is evident, that at that time the Spray must have been three or four times further off from it than the Lane, or distant from it FIVE OR SIX miles

When the master of the Spray observed that the Lane had lowered her main-sail, and was standing off shore, he, as he says, "jumped to the conclusion" that she was not going into the harbor.

He thereupon put additional sail on his vessel, and being to the northward and westward, came down before the wind at a high rate of speed.

He continued his course without any reference to the Lane's movements, and while in the act of passing close to, or as some of the witnesses assert, OVER THE OUTERMOST OF THE ROCKS, which form the ledge, came in contact with the Lane, striking her about midships with his stern. The two vessels swung together and were carried into the harbor, where the Lane soon after was stranded on its southerly shore.

On the part of the respondents it is urged, that the action of the Lane in standing off shore and lowering her main-sail, indicated to the master of the Spray, that she was not going in, and gave him the right to treat her as having abandoned the right to do so, which being in advance, she would otherwise have had.

It is true, that the conclusion at which the master of the Spray arrived was natural and justified by the appearances.

But his mistake must have been apparent to him the moment the Lane wore around and stood in for the harbor. During the whole time that the Lane was accomplishing the mile and-a-half which she performed before reaching the point of collision, her intention to go in must have been manifest, and the master of the Spray had no right to attempt to cut her off and get into the harbor ahead of her, if by so doing he exposed himself to the danger of a collision.

The account of the occurrence given by Captain Tommeldge, a witness for the claimants, is conclusive as to the merits of the case.

He states, that when he saw the Lane standing off shore, he thought she was not going in, but when he saw her haul in and set her main, he *knew she was* going in; this he says occurred about half an hour before the collision. The Lane was then about two miles from the Point of Rocks; the Spray four or five miles off. He adds, "if I had been coming in as the Spray was, I should have done my best to get in first and get my load first. If I had missed it, and cut him down, I should have had to stand the consequences. The Lane was ahead and had the first right to go in."

I entirely assent to the correctness of the views of this witness, and think there is no room for doubt that the collision was caused by an attempt on the part of the Spray

to cross the track and get ahead of the Lane when the latter was too far in advance to allow her to do so.

There is so little conflict of testimony as to the principal facts in the case, that I do not deem it necessary to consider the evidence relative to the subsequent admissions of the master of the Spray or the testimony of persons on shore, whose attention was attracted to the "race" between the vessels.

It is suggested in the brief submitted by the advocate for the claimants, that the immediate cause of the collision was the force of a breaker, which threw the Spray against the Lane, and the testimony of some of the witnesses is referred to, to the effect, that a vessel in the breakers near the Point of Rocks, is, to a great extent, unmanageable.

But this, if it be true, is no excuse for the Spray—she had no right in attempting to cut off the Lane to run into breakers which rendered her unmanageable.

During the whole time that the Lane was standing in (half an hour according to the claimant's own witness) her intention to go in was unmistakable, and the Spray should have given way and yielded precedence to her before she had placed herself in a position to render the effort to avoid her impracticable, or even of doubtful result.

I think it very plain that the accident must be attributed solely to the fault of the Spray.

An order of reference to the Commissioner to ascertain and report the damages must be entered.

Signed, OGDEN HOFFMAN,
District Judge

We hereby stipulate that the foregoing is a full, true, and correct copy of the opinion delivered by the District Judge in the above entitled cause now pending on appeal in the Supreme Court of the United States; and we fur-

ther stipulate, that the same may be attached to and made a part of the record in the said Supreme Court, said opinion having been a part of the record in the Circuit Court.

W. W. COPE,
Attorney for Appellant.

SAN FRANCISCO, *October* 31*st*, 1870.

McALLISTERS & BERGINY,
Attorneys for Respondents.

No. 349,

IN THE SUPREME COUR

OF THE

UNITED STATES.

THE SCHOONER "OCEAN SPRAY," Etc.
GEORGE KENTFIELD, Claimant.
Appellants.

vs.

N. C. ERLANDSEN, et. al.,

BRIEF FOR APPELLEES.

HALL McALLISTER,
of Counsel.

SAN FRANCISCO:
STEAM PRINTING HOUSE OF A. L. BANCROFT AND COMP
721 Market Street.
1870.

IN THE SUPREME COURT

OF THE

UNITED STATES.

THE SCHOONER "OCEAN SPRAY" ETC.,
GEORGE KENTFIELD, Claimant,
Appellant,

vs.

N. C. ERLANDSEN, ET AL.,
Appellees.

BRIEF OF APPELLEES.

Being unable to state the facts in this [illegible] more concisely than they are set forth in [illegible] opinion of His Honor the District Judge, before whom this case was originally tried, we adopt, as our statement of facts his opinion in full. It is as follows:

"On the morning of the fourth of March last, the schooners 'Lane' and 'Ocean Spray' were proceeding along the coast—the 'Lane' bound for Mendocino Harbor, and the 'Spray' for Little River, a harbor, or, as it is not inappropriately called, a 'hole' in the coast, about three miles further to the southward. The 'Lane' was at this time con-

siderably in advance of the 'Spray,' probably not less than seven or eight miles.

"On approaching within about one half a mile of Mendocino Harbor, the master of the 'Lane' observed the flag on shore at half-mast, indicating that it would be dangerous to enter the harbor. He therefore squared away, and ran down the coast, intending to go into Little River. He had accomplished about two thirds of the distance between the harbors, when he found he was too far in shore to permit him to weather the end of the ledge of rocks which forms the northerly side of the entrance to Little River Harbor.

"He, therefore, jibed his mainsail and stood off In doing so his main sheet parted. He pon lowered his mainsail, hoisted his fore- d stood off under his foresail until he could the damage. As soon as this was effected, wered his foresail, wore his vessel around, ood directly in for the harbor, under main- ud jib. All the witnesses agree that at this e he was distant from the shore about one mile and a half, or two miles, and directly off the entrance to the harbor.

"It is also stated by all the witnesses that the 'Spray' was going three or four times as fast as the 'Lane,' when the latter was standing in for the harbor. As the vessels at these different rates of speed reached a common point of collision, which was distant a mile and a half from the 'Lane' when she wore round and headed for the harbor, it is evident that at that time the 'Spray' must have

been three or four times further off from it than the 'Lane," or distant from it five or six miles. When the master of the 'Spray' observed that the 'Lane' had lowered her mainsail and was standing off shore, he, as he says, 'jumped to the conclusion' that she was not going into the harbor. He thereupon put additional sail on his vessel, and, being to the northward and westward, came down before the wind at a high rate of speed. He continued his course without any reference to the 'Lane's movements, and, while in the act of passing close to, or, as some of the witnesses assert, passing the outermost of the rocks which formed the ledge, came in contact with the 'Lane,' striking her about amidships with his stem. The two vessels swung together and were carried into the harbor, where the 'Lane' soon after was stranded on its southerly shore.

"On the part of the respondents it is urged that the action of the 'Lane' in standing off shore, and lowering her mainsail, indicated to the master of the 'Spray' that she was not going in, and gave him the right to treat her as having abandoned the right to do so, which being in advance she would otherwise have had.

"It is true that the conclusion at which the master of the 'Spray' arrived was natural and justified by the appearances. But his mistake must have been apparent to him the moment the 'Lane' wore round and stood in for the harbor.

"During the whole time that the 'Lane' was accomplishing the mile and a half which she per-

formed before reaching the point of collision, her intention to go in must have been manifest, and the master of the 'Spray' had no right to attempt to cut her off and get into the harbor ahead of her, if by so doing he exposed himself to the danger of a collision.

"The account of the occurrence given by Captain Tommeledge, a witness for the claimants, is conclusive as to the merits of the case. He states that when he saw the 'Lane' standing off shore, he thought she was not going in, but when he saw her set her mainsail, '*he knew she was going in.*' This, he says, occurred about half an hour before the collision. The 'Lane' was then about two miles from the point of rocks—the 'Spray' four or five miles off. He adds: 'If I had been coming in as the 'Spray' was, I should have done my best to get in first and get my load first. If I had missed it and cut him down, I should have had to stand the consequences. The 'Lane' was ahead and had the first right to go in.'

"I entirely assent to the correctness of the views of this witness, and think there is no room for doubt that the collision was caused by an attempt on the part of the 'Spray' to cross the track and get ahead of the 'Lane' when the latter was too far in advance to allow her to do so. There is so little conflict of testimony, as to the principal facts in the case, that I do not deem it necessary to consider the evidence relative to the subsequent admissions of the master of the 'Spray,' or the testimony of persons on shore, whose attention was attracted to the 'race' between the vessels.

"It is suggested in the brief submitted by the advocate for the claimants that the immediate cause of the collision was the force of a breaker, which threw the 'Spray' against the 'Lane,' and the testimony of some of the witnesses is referred to, to the effect that a vessel in the breakers near the point of rocks is to a great extent unmanagable. But this, if it be true, is no excuse to the 'Spray;' she had no right, in attempting to cut off the 'Lane,' to run into breakers which rendered her unmanagable. During the whole time that the 'Lane' was standing in (half an hour, according to the claimant's own witness,) the intention to go in was unmistakable, and the 'Spray' should have given way and yielded the precedence to her before she had placed herself in a position to render the effort to avoid her impracticable, or even of doubtful result. I think it very plain that the the accident must be attributed solely to the fault of the 'Spray.'"

This Court is told in appellant's brief that the above "decision originated in a misapprehension of material facts," and that the evidence chiefly relied upon, "was unworthy of attention." (Brief, p. 3.)

A glance at the exhibit attached to the transcript, a copy of which prefaces this brief, its correctness proven by a dozen witnesses, which was used on the trial, shows most conclusively that there was, there could have been, no "misapprehension of material, or of any, facts."

His honor, the District Judge, finds in substance the following facts:

I. That when near the mouth of Little River Harbor, the "Lane" stood out for a mile and a half, then wore around, and stood directly in for the harbor, under jib and mainsail.

II. That at, and from that time, the "Spray" sailed three or four times as fast as the "Lane," and both met at the entrance of the harbor.

III. That, therefore, the "Spray" was five or six miles from the place of collision, when the "Lane" first intimated clearly her intention of going in.

IV. That there was sufficient time from that moment, to have enabled the "Spray" to avoid the collision.

V. That "there is no room for doubt that the collision was caused by an attempt on the part of the "Spray" to cross the track, and get ahead of the "Lane," when the latter was too far in advance to allow her to do so."

The Judge, therefore, as a matter of law, finds that the "Spray" was the sole cause of the collision.

Upon three important points, his honor expressed no opinion, because there is so little conflict of testimony as to above facts.

I. That those who witnessed the course and conduct of the vessels, saw, and spoke of the "race" then going on between the "Spray," coming before the wind, all sails set, and the "Lane" standing in on the wind, under mainsail and jib.

II. The subsequent admissions of claimant, that "he supposed it was the "Ellen Adelia," and he was trying to get in ahead of her, to get in first."

III. That the "Spray" in her endeavors to get in ahead, crossed the ledge of rocks, instead of giving it the usual berth.

Let us examine the testimony upon the findings of fact in above decision, and see whether the "misapprehension of material facts," spoken of by appellant, has any existence, except in his brief.

I. That when near the mouth of Little River harbor, the *Lane* stood out for a mile and a half, then wore around and stood directly in for the harbor, under jib and mainsail.

We need not deny that the action of the "Lane" in standing off shore *might have* misled the "Spray" into the belief that she was not going in; but, if when one mile and a half from the entrance she wore around and headed directly for the harbor, the "Spray" certainly was not authorized entirely to ignore this fact, nor her master to form the opinion

expressed upon the stand : "*After she lowered her mainsail, there was nothing she could do to convince me she was going into that hole.*" (Rec. fol. 41.)

As to this first finding of fact, the testimony is as follows :

Libellant ERLANDSEN, master and owner of *Lane*, says :

"Just before getting to the northwest point of Little River harbor, I was compelled to jibe my mainsail; in doing so, I carried away my mainsheet. I lowered my mainsail to reeve a new sheet, and headed her off shore. As I was close in I could not get around northwest point of harbor; *stood off about one and a half mile*, then lowered my foresail to wear ship; I then headed her right into Little River harbor; I then hoisted the mainsail." (Rec. fol. 30.)

Again, he says on cross-examination:

"I jibed the mainsail because I was too close in; ran out about a mile and a half." (Rec. fol. 33.)

CHARLES SMITH, mate of "Lane," says :

"Squared off for Little River; run two and a half miles ; we jibed mainsail; parted mainsheet too close to shore; *we ran off shore about two miles.* As soon as we got mainsheet rove, hoisted mainsail, lowered foresail, and stood in for Little River." (Rec. fol. 34.)

Again, on cross-examination, he says:

"Got the mainsail set a minute or two after we wore round ; hoisted it right up with so many men on board (passengers helped). * * * *

We hoisted our peak outside, when we hoisted the sail. We were a mile or two off." (Rec. fol. 36.)

JAMES MCCLELLAN, shipwright, a passenger on the "Lane," says:

"Jibed boom; parted her mainsheet; *stood out one and a half or two miles*, under foresail and jib; she then wore around. * * * I should judge we were then about a mile from point of collision. (Rec. fol. 36.)

Capt. KENTFIELD, claimant, master and owner of "Spray," says:

"I was steering to make land; about ten o'clock saw the flag at Mendocino. The "Lane" was then three miles ahead of me; saw him before that, when he hauled his wind, and headed for Mendocino. When he went off, I made sure he was going into Little River harbor; he was then four miles off. The next I saw of him, he had lowered his mainsail; I was then off Mendocino Point; my course was east by south. *I told the mate to hoist the foresail*, as that vessel was not going in. I was then three and a half miles off; my orders were obeyed. I took the wheel; run along eight or ten minutes, and looked for him again. I came to the conclusion that he was going to luff, and see me go in; gave him one look, and then looked ahead to keep my course. In about a minute, I looked again; his peak was down; *he was about half a mile ahead, and on the outside*. I made up my mind he was going to luff to, and swing

her off shore; *never looked at him again after that.*" (Rec. fol. 38.)

Again:

"I suppose the mouth of the harbor about three hundred feet across. * * * * He was about three quarters of a mile outside of me." (Rec. fol. 39.)

On cross-examination, he says:

"I saw the mainsail hoisted on the "Lane." This was four, or five, or six minutes before the collision. *She was about a mile off; I was astern of him;* she was heading about the same as I was—down the coast before the sea." (Rec. f. 39–46.)

In this the claimant is contradicted by all the witnesses, who state as soon as mainsail hoisted the "Lane" stood in for Little River.

If the "Lane" was three fourths of a mile *outside*, as just before stated by claimant, and both running down the coast, as now stated, the vessels could not have collided at the mouth of Little River, which was abreast of the "Lane." To have met at the point of collision the "Lane" must have been, as testified to by all the witnesses, heading directly in for Little River, with her mainsail up, (not heading down the coast,) when claimant, as he says, saw her "about a mile off."

Again, CLAIMANT says:

"I put more sail on my boat, to get through the breakers. This was off Mendocino. This was after he had hauled his wind; hauled his mainsail down. I made up my mind to go in; put down my centre-board. I called my mate, and said:

'That's the Ellen Adelia, and she's afraid to go in. Give her more canvas, for I'm going in that hole.' It was ten minutes before I looked at him again ; I was then a mile or a mile and a half from shore ; his foresail was down, and he was beginning to hoist his mainsail. I came to the conclusion that he was going to luff and come to under my stern. *He was then one and a half miles off.* I ran about a minute, looked at him, *found he was too far in shore to luff, and see me go in ;* he had his peak down and jib up. He was then about a quarter of a mile off shore. If I had had any idea he was going in, I would have jibed my vessel. I felt very confident he was not going in ; I *did not look at him again* until my mate sung out he was coming in the hole ; he sung out *luff*, and then *hard down ;* that may have been about three minutes after I last looked at him. The collision occurred about three seconds or half a minute afterward." (Rec., fols. 41, 42.)

In above statement claimant admits that he looked and found the "Lane" was too far in shore to luff and see him go in, and that she was then a quarter of a mile off from him ; the question then arises, if the "Lane" could not luff, what was she going to do?—was she not going in? She was a quarter of a mile off, and the "Spray," running before the wind, had ample time to get out of the way of this vessel, a quarter of a mile off, on the wind ; that was too close to the shore to luff and see him go in.

H. M. HAYWARD, mate of "Spray," claimant's witness, says:

"She (Lane) was about two thirds of the way from Mendocino to Little River Harbor when she stood off shore, and hauled down her mainsail. We thought she was going to reef; any one would have thought so. Captain told me to give her the foresail, and we kept off a little, so as to lay our course for the point. Did not pay any more attention to her until we were about half way down; *she was standing off shore,* under foresail and jib; I think we were further off shore. We were going ten knots; she might possibly have been going two knots. She was then a mile or a mile and a half

* * * * "*I am sure Captain Kentfield paid no attention to her from the time she hauled down her mainsail until I called to him to luff, when the collision was inevitable.* The Captain was at the wheel." (Rec., fols. 42, 43.)

Again, on cross-examination, witness says:

"Whatever lookout was kept, I kept; all hands might have looked out, and I not know it. We had no regular lookout."

CAPT. TOMMELEDGE, shipmaster, claimant's witness, says:

"At time of collision I was five or six miles from the vessels." * * * "Saw her ('Lane') bear off, haul her mainsail down, afterward her foresail; she then headed down, under jib only; kept this course five minutes. *She was then a mile and a half off the point;* the 'Spray' was then from three to

five miles off from the point of rocks; at the time the 'Lane' was standing down *she was then about opposite the mouth of the channel;* she then hauled up, hoisted her mainsail, and stood in for the harbor; she may have been a mile and a half or two miles from the point of rocks; the 'Lane' stood in, and the 'Spray' came into her. When the 'Lane' hauled up and stood into the harbor she must have been two miles out, making about from one and a half to two miles per hour. While setting his mainsail the 'Spray' was then four or five miles off." * * * "*When I saw him haul in and set his mainsail then I knew he was going in; he did this about half of an hour before the collision.*" (Rec., fols. 46, 47.)

This is the witness called by claimant, in regard to whom the District Judge and appellant's counsel are so much at variance; the former, judging from his manner of testifying and demeanor on the witness stand, believes him worthy of credence; the latter holds up his hands with holy horror at the "miserable wretch who is willing to pronounce his own infamy in order to injure another."

The infamy referred to in above sentence being the statement, made by the witness, "I should have done my best to get in first, and get my load first; if I had missed it and cut him down I should have had to stand the consequences." (Rec., fol. 47.)

As this was the course pursued by claimant, so pronounced by two Courts, we can only, in reply

to his epithets, recommend counsel — "take the beam out of your own eye."

But it will be found upon examination that the testimony of this witness is more accurate than that of any of the witnesses called by either party.

All testify that the "Lane" stood off shore from one mile to two miles, then headed in.

Hayward, mate of "Spray" says, "the 'Lane' was not going more than two miles an hour." (Rec., fol. 46.)

If, therefore, she went out one mile, it must have taken her about half an hour to reach the point of collision, which is the time stated by this witness, to which statement appellant objects so strenously.

J. M. GRIMMER, seaman on "Spray," witness for libelant, says: "When the 'Lane' changed her course, she ran down along the coast until she got close to Little River Harbor; she changed her course and stood off shore to the southward and westward. I cannot say how far she stood off; she then rounded to, heading in shore. * * When the 'Lane' commenced to make sail and stand in shore, the 'Spray' was a mile and a half, or thereabouts, to the windward of her." (Rec., fol. 50.)

Again he says:

"She ('Lane') was heading in shore, off the mouth of Little River Harbor, when she lowered her foresail; and about the same time she commenced to hoist her mainsail. * * * * We ('Spray') went about a mile and a half after he

lowered the foresail and commenced to hoist mainsail till collision." (Rec., fol. 55.)

PETER THOMPSON, seaman on "Spray," called for claimant, says:

"The 'Lane' went outside of the track of our vessel a mile, or a mile and a half. *When about a mile, or a mile and a half outside* of the 'Spray,' she wore around under foresail and jib, and lowered foresail. She commenced to hoist her mainsail up, and in about three minutes changed her course, heading in for Little River. She was going about two miles; the 'Spray' about ten miles an hour. (Rec., fols. 68, 69.)

Question—"How far off was the 'Spray' from the 'Lane' when the 'Lane' commenced to head for Little River Harbor?"

Answer—"*About a mile and a half.*" (Rec., fol. 78.)

This witness, a seaman on the "Spray" saw the "Lane" heading in for Little River when the vessels were one mile and a half apart. Yet, the captain and mate tell us they were ignorant of the situation of the "Lane" until when within a few feet of her.

Captain SCOTT, claimant's witness, master of the "Ellen Adelia," then lying in Little River Harbor, says:

"She ('Lane') lowered down her mainsail; she stood off shore under foresail and jib; after a while he lowered his foresail down, and wore round under his jib. * * * As soon as the 'Lane'

wore round she commenced hoisting her mainsail." (Rec., fol. 81.)

Question—"How long was it from the time the 'Lane' headed into the harbor, to the time of collision?"

Answer—"*May be ten or fifteen minutes, more or less.*" (Rec., fol. 89.)

THOMAS BROWN, libellant's witness, a passenger on the "Lane," says:

"When the 'Lane' wore ship and headed in, she was *about a mile and a half off* the northwest point of rocks at the entrance of Little River harbor. The time which elapsed between the heading of the "Lane" into the harbor and the collision *could not have exceeded half of an hour.* (Rec. fols. 157–8.)

J. E. COULSON, libellant's witness, standing on the shore at the time, says:

"Looked at the 'Lane;' I discovered that his mainsail jibed over; and all at once I saw that his mainsail was lowered down; he headed his vessel out to the westward under foresail and jib; he stood off, so far as I could judge from me looking at him, *about a mile and a half.* I then saw the schooner 'Spray' right abreast of our blacksmith shop, on the point at Mendocino, but at the same time I saw the 'Lane' lower down his foresail and jibe round his vessel to the northward and eastward. I saw them setting his mainsail at that time, after he got around. At that time the 'Spray' shook a reef out of her foresail; she had

a reefed foresail and mainsail, and jib on her. When I saw her first, she had what I would judge been going about ten miles an hour. When she shook the reef out, it was blowing very hard from the northwest. Then I saw the 'Lane' heading right in for Little River on the wind, and the 'Spray' was right before the wind. (Recs. fol. 162–3.) When the 'Lane' wore ship, the 'Spray' was three miles away from her. At that time the 'Lane' was a mile and a half from the mouth of of Little River." (Rec. fols. 163–4.)

This is the testimony upon which the District Judge based the finding of fact, that when near the entrance, the 'Lane' stood off shore from one to two miles, wore around and headed for the harbor, under jib and mainsail.

It is a fact, testified to positively, as shown in the above quotations from their testimony, by Erlandsen, Harney, McClellan, Grinnell, Brown, and Carlson, libellant's witnesses; and by Tommeledge, Thompson, and Scott, claimant's witnesses. Even claimant, his mate, and appellant's counsel in his brief, admit the "Lane" stood out, "crossed" the track of the "Spray," and thus misled her into the belief that she ("Lane") was not going in; but how she got back to the point they don't know; they found her there just entering the harbor, on the wind, and then and there incontinently [redacted] cut her down.

Thompson, a seaman on their vessel, and their own witness, saw her heading in for the harbor, as he says, when the vessels were about a mile and

a half apart; but the mate, who was on the look-out, "if there was any," and the captain at the wheel did not deem it necessary to pay any attention to her, as she had previously crossed their track.

A complaint is made by appellant's counsel (brief, p. 16,) because as Smith, the mate of the 'Lane,' says: "When we got up to the reef, we hauled in mainsheet, and brought her on the wind to go into the harbor." This course is characterized by counsel as caused by "culpable negligence or intentional wrong."

A glance at the exhibit will show, that with the wind from a northerly direction, and entering a "hole" (as stated by claimant,) 300 feet wide, it was necessary to hug the northerly shore, to prevent being driven to leeward on the rocks, a few feet distant, as the mate says *we luffed up to go in.*

As to the second and third facts found by the District Judge,

II. That from the time the "Lane" headed in, the speed of the "Spray," was three or four times greater than her's, and they met at the entrance to the harbor.

III. That, therefore, the "Spray" was five or six miles from the place of collision, when the "Lane" first intimated clearly her intention of going in.

It will be seen from the exhibit, and gathered from the testimony, that from the time the "Lane" headed in, she sailed, as it were, on the side of a right angled triangle, the "Spray" upon its hypothenuse, and they met where these joined. As to the speed of the two vessels, the testimony is as follows:

SMITH, mate of "Lane," says:

"I think the "Spray" was going ten miles an hour. * * * We were going about four to four and a half." (Rec. fol. 35.)

HAYWARD, mate of "Spray," claimant's witness, says:

"We were going ten knots; she might possibly have been going two knots." (Rec. fol. 43.)

"We were going four times as fast as she; she was not going more than two miles an hour." (Rec. fol. 46.)

CAPT. TOMMELEDGE, claimant's witness, says:

"When "Lane" hauled up, and stood into the harbor, she must have been two miles out, making about from one and a half to two miles per hour." (Rec. fol. 46).

THOMPSON, seaman on "Spray," claimant's witness, says:

"The "Spray" was going ten knots, the "Lane" two knots at the time." (Rec. fol. 69.)

It appears from the above, that claimant's witnesses more than sustained the finding of the District Judge, that the "Spray" was sailing three or four times as fast as the "Lane."

But it needed not the testimony of witnesses to prove this, the fact that the "Spray" was before the wind, with all sails set, and the "Lane" was on the wind, under mainsail and jib, would prove most conclusively, the relative speed of the vessels.

The counsel for appellant has a word of warning for this Court as to discrepancies in testimony and opinions of witnesses upon the questions of time and distance. We can, therefore, relieve his anxiety in this regard, by placing before the Court this pregnant fact, that these two vessels started to reach the same point, the one on the wind, under jib and mainsail, the other before the wind, under full sail, and it requires no nautical experience to tell us, that the latter must have started from a point at a much greater distance from the point of collision than the former, if they, as in this case, reach the destined point at the same moment.

We might relieve this case of all the opinions of witnesses as to time and distances, and of all those statements the discrepancies of which are ear-marks of their truth, and submit the case on this fact alone.

If, therefore, the "Lane" was from one to two miles from the point of collision, sailing two knots an hour, the "Spray," if sailing ten knots, was from five to six miles from the same point. If, however, the "Lane," as stated by her mate, was sailing from four to four and a half knots, the "Spray" was from two to three miles off. This

is the testimony that sustains the findings of the Court last above quoted.

We now come to the last findings of the District Judge—viz :

That there was sufficient time from the "heading in" of the "Lane" for the "Spray" to have seen her, and avoided the collision, and that therefore the "Spray" is the sole cause of the collision.

These are but deductions from the other findings. If the "Lane" went off shore but one mile she was from a quarter to a half hour returning. In that time the "Spray," according to Hayward, her mate, had sailed two miles and a half. If the "Lane" went off shore but half a mile, then wore around and headed in, the "Spray" at that time was one mile and a quarter off. These are not opinions—they are facts, based upon the speed of the two vessels; and, without any testimony as to that, could be easily based upon the conditions of the vessels as to sails and direction of the wind.

It is not necessary to quote the opinions of the witnesses as to the time which elapsed between the "heading in" of the "Lane" and the collision.

Six witnesses upon behalf of libellant and three witnesses on behalf of claimant, as shown above, testify to the specific fact of the "Lane" *wearing around and standing in for Little River, when one mile and a half distant*, and they estimate the time which elapsed from that moment to the time of the collision variously from half of an hour, the

highest, to five minutes, the lowest estimate, which is made by one of claimant's witnesses.

It will be remembered that, according to her mate, the "Spray" at that time was making a mile every six minutes.

We need not attempt to argue to this Court, that a vessel, under control, with more than a whole sail breeze, running before it, in broad daylight, with the Pacific Ocean on her starboard beam, should get out of the way of a vessel, on the wind, crossing her path seen a mile, aye even a quarter of a mile ahead; the plain common sense of the lowest sailor on board would teach him that, the law of the sea demands it, and the Acts of Congress require it;

"When two sailing ships are crossing so as to involve risk of collision, then, if they have the wind on different sides, the ship with the wind on the port side shall keep out of the way of the ship with the wind on the starboard side, except in the case in which the ship with the wind on the port side is close hauled, and the other ship free, in which case the latter ship shall keep out of the way.

"*But if they have the wind on the same side, or if one of them has the wind aft, the ship which is to windward shall keep out of the way of the ship which is to leeward.*"

Art. XII, Act April 29th, 1864, 13 Stat. at Large, 58.

It is impossible to ascertain from claimant's testimony, or his counsel's brief, their account of the

"Lane's" movements. Claimant and his mate, admit that she crossed the track of the "Spray" standing off shore. Claimant says "three quarters of a mile outside of me." He gave her two or three looks, as he says, but never could see her heading toward the harbor until he ran up against her at its entrance. Hayward, her mate, who, if any look-out was kept on the "Spray," kept it, saw the "Lane" standing off shore, but he is [illegible] ignorant as to how she got back to the entrance of the harbor.

What ten witnesses saw, to wit.: the wearing of the "Lane" and heading in for the harbor, these two skillful mariners could not see.

What Thompson, one of their crew, saw, they were unable to see. It was only when the collision was inevitable; when these two vessels met in this "hole" three hundred feet wide, the one cutting the other to the water's edge, that the master and mate could for the first time discover this fact.

Their counsel seems to be no more clear-sighted upon this point than themselves. On page ten of his brief he sails the "Lane" off shore. This he says she did, misleading the master of the "Spray" as to her subsequent movements. And on page twelve he luffs her across the bows of the "Spray," leaving it to us to imagine how she got there.

Is it not useless for the master and mate to attempt to deceive with the excuse that they were ignorant of the movements and intention of the

"Lane." Every one who saw the vessels knew it except themselves, unless, indeed, we believe the statement of Hayward, the mate of the "Spray," when he tells us, "I am sure Captain Kentfield paid no attention to her from the time she hauled her mainsail down until I called to him to luff, when the collision was inevitable." (Rec., fol. 43.) Judging by the facts, the mate might well be sure of this, and this alone can save the claimant from a just accusation of attempting to deceive the Court.

It will be remembered that the mainsail was hauled down before the "Lane" stood off shore, for the purpose of reeving a new mainsheet.

The conclusion we are forced to in this case is, that, as he subsequently stated, Capt. Kentfield, seeing the "Lane" was too close in, and had to stand off shore, and believing her to be the "Ellen Adelia," bound for the same harbor, thought he could get in first; and when off Mendocino, ordered more sail on his vessel, to get in ahead; he missed it, and cut the "Lane" to the water's edge.

This is proven, not only by the facts above set forth, but by the further fact that there was no need of any more sail; he was before the wind, fore and aft sails set; there was no need of shaking out reefs, or making more sail to get in with, as we know the "Lane" was going in under mainsail and jib, and was actually at or within the entrance when cut down—but, as some excuse must be made by him for crowding on sail, claimant tells us it was to "get through the breakers."

More sail was not needed by the "Lane," and, therefore, this explanation is hardly deemed satisfactory.

Besides, the facts found by the District Judge, there are three prominent ones upon which he expressed no opinion, each of which is conclusive upon this case.

I. That the men on the shore saw the vessels as they supposed racing, to get in first.

II. That Capt. Kentfield, claimant, stated to many persons that he thought it was the "Ellen Adelia," and that he was trying to get in to load first.

III. That in his endeavors to "cut off" the "Lane," claimant crossed the ledge of rocks, thus pursuing an unusual course to get into the harbor

It could hardly have attracted the attention of any bystander, as a "race" between these two schooners, had they not each been endeavoring to reach the same point, to wit, the harbor of Little River, first. If, then, this fact was so patent as to elicit comment on the part of eye-witnesses we might readily ask why did not claimant know of it himself. He seems to have done so, by shaking out his reefs, and taking the shortest cut for the entrance.

Claimant tells us:

"The men on shore all dropped work, and said "Here's a race, boys." They all hurrahed, they ran and hallooed." (Rec. fol. 40.)

Yet claimant, seeing this, would have us believe that he was racing with no one, that he thought the other schooner was waiting for him to go in first, that those who halloed and shouted "a race," were mistaken, and that he had a right to "jump to the conclusion" (a wrong one,) that no vessel was trying to reach the harbor at the same time with himself.

Upon the second point, that the master of the "Spray" thought the schooner ahead was the "Ellen Adelia," bound for the same port, we have his own statement.

On appellant's brief, page twenty, by way of excuse for the conclusion "jumped at" by the master of the "Spray," *i. e.*, That the schooner ahead was not going into Little River, we find the statement, "In the first place they had seen the 'Lane' heading for Mendocino, and the reasonable supposition was that she was bound for that port, and would get her load there, if she wanted one. They had also seen the signal which caused her to leave, and it was natural for them to conclude that in going to Little River her purpose was temporary, and that she was merely seeking a place of refuge during the rough weather. In the second place, there is no evidence that the 'Spray' wanted a load at Little River." (Brief p. 20.)

Unfortunately for counsel and his theory as stated above, it is denied by claimant, and Hayward, his mate; they, by their own acknowledgment, *did* suppose it was the "Ellen Adelia," and they *did* know she was going there for a load.

Claimant says:

"I thought her the 'Ellen Adelia.' * * * I called my mate and said 'That's the 'Ellen Adelia' and she is afraid to go in." (Rec., fol. 41.)

HAYWARD, claimant's mate and witness, says:

"The Captain remarked it was the 'Ellen Adelia.'" (Rec., fol. 44.)

Not only does claimant so state to the Court from the witness stand, but just subsequently to the collision he explained the motives of his conduct to many witnesses.

Captain ERLANDSEN, libellant, says:

"The same evening, after the collision, Captain Kentfield told me he had no idea my vessel was the 'Lane;' he thought her the 'Ellen Adelia;' that he would show a Dutchman how to get into port; that he would teach us to look out for what was coming behind; that his vessel was a regular monitor." (Rec., fol. 32.)

In folio 40 of the record, claimant admits having designated his vessel as a "Monitor," but says the conversation was not serious.

F. GOLGERT, libellant's witness, says:

"Heard him (Kentfield) say in the store, that he thought it was the schooner 'Ellen Adelia' before he struck the 'Lane,' and that he wanted to get in ahead of her. Heard him say he would learn them how to get into port ahead." (Rec., fol. 119.)

A. F. MAHLMANN, libellant's witness, says:

"I heard Kentfield make a statement in regard to the collision. He said, 'he did not know that

it was the 'Lane,' he thought it was the schooner 'Ellen Adelia,' Captain Scott, and tried to get ahead of her for to get the first chance to load; heard nothing more. Heard him say that twice." (Rec., fol. 122.)

W. H. DUNN, libellant's witness, says:

"I know George Kentfield. I heard him say that he supposed it was the 'Ellen Adelia,' and that he was trying to get in ahead of her to get in first." (Rec., fol. 128.)

J. E. CARLSON, libellant's witness, says:

"Kentfield answered him, I thought it was the 'Ellen Adelia,' and that I was bound to beat her in if I could. I won't allow anybody to beat me if I can help myself." (Rec., fol. 165.)

The above statement of claimant, his mate and five witnesses, give a pretty accurate solution of claimant's conduct. He supposed the vessel ahead was the "Ellen Adelia." He knew she was bound for the same port as himself, and *he was bound to beat her in so as to load first.*

His motive in this, is explained by his own witness, Captain Scott, who says:

"In winter time it makes a good deal of difference as to the detention of a schooner, as to which gets into the harbor first. Some times *three weeks*, some times only a couple of days difference. The first vessel that gets in loads first, the others have to wait till she is loaded. They can only load one vessel at a time." (Rec., fol. 89.)

The last fact that we propose to discuss is, that although (as he says) claimant thought his was

the only vessel making for the harbor at that time, and although the other vessel was standing off, waiting to see him go in, (as contended for by claimant,) yet he was so eager to get in that he took a "short cut," pursued a most unusual course, and jeoparded his vessel in his eagerness.

In the first place, we find that while, as claimant says, he was among the breakers, and in the ground swell, where his boat was unmanageable at time of collision, and that it was a breaker that took the "Spray" and threw it into the "Lane," the "Lane," which was in the channel, pursuing the usual course of vessels in entering the harbor, was not troubled with breakers, and did not become unmanageable. Besides these significant facts, we have positive testimony upon this point:

CHRISTIAN BROWN, libellant's witness, says:

"Was master of schooner 'May Queen,' then lying in Little River. Have been to Little River constantly for the last year or eighteen months. The 'Spray' did not follow the course usually taken by vessels entering the harbor from the northward. The course is northeast-by-north. She was entering at the time about east-southeast. As near as I could see she went over the reef, and I think this was the cause of the collision." (Rec., fol. 60.)

Capt. SCOTT, of "Ellen Adelia," claimant's witness, says:

"The 'Spray' came in closer than vessels usually do in entering the harbor in such weather." (Rec., fol. 88.)

"I thought she was close to the reef, and would strike; she might have been far enough off; never can tell exactly." (Rec., fol. 81.)

PETER PETERSON, libellant's witness, says:

"Spray" did not pursue the usual course of vessels coming into the harbor; the "Lane" did.

"The outside rocks on the outside ledge are sunken rocks. Vessels coming into the harbor from the north or the north and west give the sunken rocks a good offing, and then haul in their sheets heading straight into the harbor. This was the course pursued by the 'Lane.'" * * "The 'Spray' came close by the land or the rocks, and either went over or just on the edge of the sunken rock." (Rec., fol. 98.)

HENRY BROWN, residing at Little River, witness for libellant, says:

"The 'Spray' did not follow the course usually taken by vessels in entering the harbor, because she was right in the breakers, where we see the rocks at low water." (Rec., fol. 102.)

ROBERT COOMBS, residing at Little River, libellant's witness, says:

"The 'Spray' crossed the ledge. There is no need of their crossing the ledge; never knew of one doing so before. About fifteen minutes before the 'Spray' crossed it, it broke; so I could see the rock." (Rec., fol. 151.)

SILAS COOMBS, residing at Little River, and libellant's witness, says:

"The 'Lane' was taking the usual course in; never saw a vessel cross where the 'Spray' did; I

think she came across the rocks or reef, and struck the 'Lane' after she crossed." (Rec., fol. 171.)

The above, uncontradicted as it is by a single witness, we deem sufficient to show that the "Spray" pursued a most unusual course; "cut across" a ledge over which, at a lower state of the tide, the sea was accustomed to break.

On folio 39 of the Record claimant tells the Court — "Have been in Little River Harbor four times; running vessels on the coast seven years." It was not then through ignorance that he took the risk of crossing this ledge, but it was with a design and for a purpose, which could only have been as stated by one of the witnesses, to cut out the "Lane," and get in ahead.

It will be observed that neither claimant nor his mate, on the lookout, deny the story told by the other witnesses; they merely tell us the position in which they saw the "Lane" *when they looked at her*, at different intervals of time.

No lookout was kept on the "Spray," but having "jumped at his conclusion," the master attended to the sailing of his own vessel.

Nor do they attempt to deny the fact that the "Lane" pursued the usual, the "Spray" an unusual course in entering.

They rely upon the solitary fact, that when three miles and a half apart the "Lane" lowered her mainsail and stood out. "I told the mate to hoist the foresail, as that vessel was not going in. *I was then three and a half miles off.*" (Claimant Rec., fol. 38.)

"*After she lowered her mainsail there was nothing she could do to convince me she was going in that 'hole.'*" (Claimant Rec., fol. 41.)

These are the salient points of the defense, christened by appellant in his brief "beacon lights." (Brief p. 29.)

Truly navigation is dangerous with Captain Kentfield in command of a vessel to windward. His incredulousness is so great that it can only be hoped that an affirmance of the righteous judgment already given in this case by two Courts, will be able to persuade him that hereafter he should be more open to conviction.

Counsel for appellant objects to the use of the measuring rod, or the counting of the ticks of the clock, in this case. He is alarmed lest too much, or, as he insists, any regard should be paid to the statements of the witnesses, as they are mere opinions upon the most difficult points, distance and time. *We think* he has under-estimated the positiveness of the testimony both of his own and libellant's witnesses. *We know* he has lost sight of what *we* beg to term the "beacon light" in the case. The *fact*, not opinion, that one vessel was before the wind, under full sail; the other on the wind, under mainsail and jib.

The questions as to how far, relatively, each of these vessels was from the point of collision, when they started for it, and how long they took to reach it, are questions upon which we ask the opinion of this Court. Not of difficult solution, es-

pecially when aided by the opinions of disinterested eye-witnesses, masters of ships and seamen.

The question presented, and to be passed upon herein by this appellate tribunal, is purely one of fact, and has been twice adjudged in favor of appellants, upon the same testimony as is contained in the record. We would, therefore, in closing our brief, refer this Court to the elementary principle, as to appeals in cases of this character, recently stated by this Court, as follows:

"This Court ought not to reverse upon a mere difference of opinion as to the weight and effect of conflicting testimony. To warrant a reversal it must be clear that the lower Courts have committed an error, and that a wrong has been done to appellants."

The "Grace Girdler," 7 Wallace, 204.

See also:

Morewood *vs.* Edequist, 23 How., 491.
Newell *vs.* Norton, 3 Wallace, 257.
The "Hypodame," 6 Wallace, 223.
Walsh *vs.* Rogers, 13 How., 284.
The "Marcellus," 1 Black, 414.
The "Water Witch," Ibid, 494.

It is therefore respectfully submitted, that the decree of the Circuit Court should be affirmed with costs.

HALL McALLISTER,

Counsel for Appellees